
HOUSE BILL 2806

State of Washington

59th Legislature

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By Representatives McIntire, Condotta, Chase, Conway, Nixon, Buri, Dickerson, Cody, Roberts, Clibborn, Hunt, Jarrett, Moeller, Sells, Ericks, Kagi and Darneille; by request of Governor Gregoire

Read first time 01/13/2006. Referred to Committee on Finance.

1 AN ACT Relating to conforming Washington's tax structure to the
2 streamlined sales and use tax agreement; amending RCW 82.32.020,
3 82.08.037, 82.12.037, 82.02.210, 82.32.030, 82.14.020, 82.14.390,
4 82.32.520, 82.04.065, 82.04.065, 82.08.0289, 82.08.0289, 82.04.060,
5 82.04.190, 82.14B.020, 82.72.010, 82.32.555, 35A.82.055, 35A.82.060,
6 35A.82.060, 35A.82.065, 35.21.712, 35.21.714, 35.21.714, 35.21.715,
7 35.21.860, 35.102.020, 82.04.530, 82.16.010, 82.08.0283, 82.12.0277,
8 82.08.803, 82.12.803, 82.08.945, 82.12.945, 82.04.470, 82.08.010,
9 82.08.010, and 82.32.430; amending 2004 c 153 s 502 (uncodified);
10 reenacting and amending RCW 82.04.050, 82.14B.030, 82.08.050, and
11 82.32.330; adding new sections to chapter 82.32 RCW; adding new
12 sections to chapter 82.14 RCW; adding new sections to chapter 82.08
13 RCW; adding new sections to chapter 82.12 RCW; adding a new section to
14 chapter 44.28 RCW; creating new sections; providing effective dates;
15 providing a contingent effective date; and providing expiration dates.

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

17 **PART I**
18 **DEFINITIONS**

1 **Sec. 101.** RCW 82.32.020 and 2003 1st sp.s. c 13 s 16 are each
2 amended to read as follows:

3 For the purposes of this chapter:

4 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
5 the words and phrases "tax year," "taxable year," "person," "company,"
6 "gross proceeds of sales," "gross income of the business," "business,"
7 "engaging in business," "successor," "gross operating revenue," "gross
8 income," "taxpayer," "retail sale," "seller," "buyer," "purchaser,"
9 "extended warranty," and "value of products" shall apply equally to the
10 provisions of this chapter.

11 (2) The definitions in this subsection apply throughout this
12 chapter, unless the context clearly requires otherwise.

13 (a) "Agreement" means the streamlined sales and use tax agreement.

14 (b) "Associate member" means a petitioning state that is found to
15 be in compliance with the agreement and changes to its laws, rules, or
16 other authorities necessary to bring it into compliance are not in
17 effect, but are scheduled to take effect on or before January 1, 2008.
18 The petitioning states, by majority vote, may also grant associate
19 member status to a petitioning state that does not receive an
20 affirmative vote of three-fourths of the petitioning states upon a
21 finding that the state has achieved substantial compliance with the
22 terms of the agreement as a whole, but not necessarily each required
23 provision, measured qualitatively, and there is a reasonable
24 expectation that the state will achieve compliance by January 1, 2008.

25 (c) "Certified automated system" means software certified under the
26 agreement to calculate the tax imposed by each jurisdiction on a
27 transaction, determine the amount of tax to remit to the appropriate
28 state, and maintain a record of the transaction.

29 (d) "Certified service provider" means an agent certified under the
30 agreement to perform all of the seller's sales and use tax functions,
31 other than the seller's obligation to remit tax on its own purchases.

32 (e)(i) "Member state" means a state that:

33 (A) Has petitioned for membership in the agreement and submitted a
34 certificate of compliance; and

35 (B) Before the effective date of the agreement, has been found to
36 be in compliance with the requirements of the agreement by an
37 affirmative vote of three-fourths of the other petitioning states; or

1 (C) After the effective date of the agreement, has been found to be
2 in compliance with the agreement by a three-fourths vote of the entire
3 governing board of the agreement.

4 (ii) Membership by reason of (e)(i)(A) and (B) of this subsection
5 is effective on the first day of a calendar quarter at least sixty days
6 after at least ten states comprising at least twenty percent of the
7 total population, as determined by the 2000 federal census, of all
8 states imposing a state sales tax have petitioned for membership and
9 have either been found in compliance with the agreement or have been
10 found to be an associate member under section 704 of the agreement.

11 (iii) Membership by reason of (e)(i)(A) and (C) of this subsection
12 is effective on the state's proposed date of entry or the first day of
13 the calendar quarter after its petition is approved by the governing
14 board, whichever is later, and is at least sixty days after its
15 petition is approved.

16 (f) "Model 1 seller" means a seller that has selected a certified
17 service provider as its agent to perform all the seller's sales and use
18 tax functions, other than the seller's obligation to remit tax on its
19 own purchases.

20 (g) "Model 2 seller" means a seller that has selected a certified
21 automated system to perform part of its sales and use tax functions,
22 but retains responsibility for remitting the tax.

23 (h) "Model 3 seller" means a seller that has sales in at least five
24 member states, has total annual sales revenue of at least five hundred
25 million dollars, has a proprietary system that calculates the amount of
26 tax due each jurisdiction, and has entered into a performance agreement
27 with the member states that establishes a tax performance standard for
28 the seller. As used in this subsection (2)(h), a seller includes an
29 affiliated group of sellers using the same proprietary system.

30 (i) "Source" means the location in which the sale or use of
31 tangible personal property, an extended warranty, or a service, subject
32 to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to
33 occur.

34 **Sec. 102.** RCW 82.08.037 and 2004 c 153 s 302 are each amended to
35 read as follows:

36 (1) A seller is entitled to a credit or refund for sales taxes

1 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
2 166, as amended or renumbered as of January 1, 2003.

3 (2) For purposes of this section, "bad debts" does not include:

4 (a) Amounts due on property that remains in the possession of the
5 seller until the full purchase price is paid;

6 (b) Expenses incurred in attempting to collect debt; and

7 (c) Repossessed property.

8 (3) If a credit or refund of sales tax is taken for a bad debt and
9 the debt is subsequently collected in whole or in part, the tax on the
10 amount collected must be paid and reported on the return filed for the
11 period in which the collection is made.

12 (4) Payments on a previously claimed bad debt are applied first
13 proportionally to the taxable price of the property or service and the
14 sales or use tax thereon, and secondly to interest, service charges,
15 and any other charges.

16 (5) If the seller uses a certified service provider as defined in
17 RCW (~~(82.58.010)~~) 82.32.020 to administer its sales tax
18 responsibilities, the certified service provider may claim, on behalf
19 of the seller, the credit or refund allowed by this section. The
20 certified service provider must credit or refund the full amount
21 received to the seller.

22 (6) The department shall allow an allocation of bad debts among
23 member states to the streamlined sales tax agreement, as defined in RCW
24 82.58.010(1), if the books and records of the person claiming bad debts
25 support the allocation.

26 **Sec. 103.** RCW 82.12.037 and 2004 c 153 s 304 are each amended to
27 read as follows:

28 (1) A seller is entitled to a credit or refund for use taxes
29 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
30 166, as amended or renumbered as of January 1, 2003.

31 (2) For purposes of this section, "bad debts" does not include:

32 (a) Amounts due on property that remains in the possession of the
33 seller until the full purchase price is paid;

34 (b) Expenses incurred in attempting to collect debt; and

35 (c) Repossessed property.

36 (3) If a credit or refund of use tax is taken for a bad debt and

1 the debt is subsequently collected in whole or in part, the tax on the
2 amount collected must be paid and reported on the return filed for the
3 period in which the collection is made.

4 (4) Payments on a previously claimed bad debt are applied first
5 proportionally to the taxable price of the property or service and the
6 sales or use tax thereon, and secondly to interest, service charges,
7 and any other charges.

8 (5) If the seller uses a certified service provider as defined in
9 RCW (~~82.58.010~~) 82.32.020 to administer its use tax responsibilities,
10 the certified service provider may claim, on behalf of the seller, the
11 credit or refund allowed by this section. The certified service
12 provider must credit or refund the full amount received to the seller.

13 (6) The department shall allow an allocation of bad debts among
14 member states to the streamlined sales and use tax agreement, as
15 defined in RCW 82.58.010(1), if the books and records of the person
16 claiming bad debts support the allocation.

17 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.32
18 RCW, to be codified between RCW 82.32.020 and 82.32.030, to read as
19 follows:

20 For purposes of compliance with the requirements of the agreement
21 only, and unless the context requires otherwise, the terms "product"
22 and "products" refer to tangible personal property, services, extended
23 warranties, and anything else that can be sold or used.

24 **Sec. 105.** RCW 82.02.210 and 2003 c 168 s 1 are each amended to
25 read as follows:

26 (1) It is the intent of the legislature that Washington join as a
27 member state in the streamlined sales and use tax agreement referred to
28 in chapter 82.58 RCW. The agreement provides for a simpler and more
29 uniform sales and use tax structure among states that have sales and
30 use taxes. The intent of the legislature is to bring Washington's
31 sales and use tax system into compliance with the agreement so that
32 Washington may join as a member state and have a voice in the
33 development and administration of the system, and to substantially
34 reduce the burden of tax compliance on sellers.

35 (2) Chapter 168, Laws of 2003 does not include changes to
36 Washington law that may be required in the future and that are not

1 fully developed under the agreement. These include, but are not
2 limited to, changes relating to on-line registration, reporting, and
3 remitting of payments by businesses for sales and use tax purposes,
4 monetary allowances for sellers and their agents, sourcing, and amnesty
5 for businesses registering under the agreement.

6 (3) It is the intent of the legislature that the provisions of
7 (~~chapters 82.08 and 82.12 RCW~~) this title relating to the
8 administration and collection of state and local sales and use taxes be
9 interpreted and applied consistently with the agreement.

10 (4) The department of revenue shall report to the fiscal committees
11 of the legislature on January 1, 2004, and each January 1st thereafter,
12 on the development of the agreement and shall recommend changes to the
13 sales and use tax structure and propose legislation as may be necessary
14 to keep Washington in compliance with the agreement.

15 **PART II**
16 **REGISTRATION**

17 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.32
18 RCW to read as follows:

19 (1) A seller, by written agreement, may appoint a person to
20 represent the seller as its agent. The seller's agent has authority to
21 register the seller with the department under RCW 82.32.030. An agent
22 may also be a certified service provider, with authority to perform all
23 the seller's sales and use tax functions, except that the seller
24 remains responsible for remitting the tax on its own purchases.

25 (2) The seller or its agent must provide the department with a copy
26 of the written agreement upon request.

27 **Sec. 202.** RCW 82.32.030 and 1996 c 111 s 2 are each amended to
28 read as follows:

29 (1) Except as provided in subsections (2) and (3) of this section,
30 if any person engages in any business or performs any act upon which a
31 tax is imposed by the preceding chapters, he or she shall, under such
32 rules as the department of revenue shall prescribe, apply for and
33 obtain from the department a registration certificate. Such
34 registration certificate shall be personal and nontransferable and
35 shall be valid as long as the taxpayer continues in business and pays

1 the tax accrued to the state. In case business is transacted at two or
2 more separate places by one taxpayer, a separate registration
3 certificate for each place at which business is transacted with the
4 public shall be required. Each certificate shall be numbered and shall
5 show the name, residence, and place and character of business of the
6 taxpayer and such other information as the department of revenue deems
7 necessary and shall be posted in a conspicuous place at the place of
8 business for which it is issued. Where a place of business of the
9 taxpayer is changed, the taxpayer must return to the department the
10 existing certificate, and a new certificate will be issued for the new
11 place of business. No person required to be registered under this
12 section shall engage in any business taxable hereunder without first
13 being so registered. The department, by rule, may provide for the
14 issuance of certificates of registration to temporary places of
15 business.

16 (2) Unless the person is a dealer as defined in RCW 9.41.010,
17 registration under this section is not required if the following
18 conditions are met:

19 (a) A person's value of products, gross proceeds of sales, or gross
20 income of the business, from all business activities taxable under
21 chapter 82.04 RCW, is less than twelve thousand dollars per year;

22 (b) The person's gross income of the business from all activities
23 taxable under chapter 82.16 RCW is less than twelve thousand dollars
24 per year;

25 (c) The person is not required to collect or pay to the department
26 of revenue any other tax or fee which the department is authorized to
27 collect; and

28 (d) The person is not otherwise required to obtain a license
29 subject to the master application procedure provided in chapter 19.02
30 RCW.

31 (3) All persons who agree to collect and remit sales and use tax to
32 the department under the agreement must register through the central
33 registration system authorized under the agreement. Persons required
34 to register under subsection (1) of this section are not relieved of
35 that requirement because of registration under this subsection (3).

36

PART III

1 **MONETARY ALLOWANCES AND VENDOR COMPENSATION**

2 NEW SECTION. **Sec. 301.** A new section is added to chapter 82.32
3 RCW to read as follows:

4 (1) The department shall adopt by rule monetary allowances for
5 certified service providers, model 2 sellers, and model 3 sellers and
6 all other sellers that are not model 1 or model 2 sellers. The
7 department may be guided by the provisions for monetary allowances
8 adopted by the governing board of the agreement to determine the amount
9 of the allowances and the conditions under which they are allowed. The
10 monetary allowances must be reasonable and provide adequate incentive
11 for certified service providers and sellers to collect and remit sales
12 and use taxes under the agreement. Monetary allowances will be funded
13 solely from state sales and use taxes.

14 (2) For certified service providers, the monetary allowance may
15 include a base rate that applies to taxable transactions processed by
16 the certified service provider. Additionally, for a period not to
17 exceed twenty-four months following a seller's registration under RCW
18 82.32.030(3), the monetary allowance may include a percentage of tax
19 revenue generated by the seller.

20 (3) For model 2 sellers, the monetary allowance may include a base
21 rate and a percentage of revenue generated by a seller registering
22 under RCW 82.32.030(3), but shall not exceed a period of twenty-four
23 months.

24 (4) For model 3 sellers and all other sellers that are not model 1
25 sellers or model 2 sellers, the monetary allowance may include a
26 percentage of tax revenue generated by a seller registering under RCW
27 82.32.030(3), but shall not exceed a period of twenty-four months.

28 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.32
29 RCW to read as follows:

30 (1) The department may adopt by rule vendor compensation for
31 sellers collecting and remitting sales and use taxes. The vendor
32 compensation may include a base rate or a percentage of tax revenue
33 collected by the seller, and may vary by type of seller. The
34 department may be guided by the findings of the cost of collection
35 study performed under the agreement, by cost of collection studies
36 performed by the department, and by vendor compensation provided by

1 other states, to determine reasonable vendor compensation for sellers
2 for the costs to collect and remit sales and use taxes. Vendor
3 compensation will be funded solely from state sales and use taxes.

4 (2) A seller is not entitled to vendor compensation while the
5 seller or its certified service provider receives a monetary allowance
6 under section 301 of this act.

7 **PART IV**
8 **AMNESTY**

9 NEW SECTION. **Sec. 401.** A new section is added to chapter 82.32
10 RCW to read as follows:

11 (1) No assessment for taxes imposed or authorized under chapters
12 82.08, 82.12, and 82.14 RCW, or related penalties or interest, may be
13 made by the department against a seller who:

14 (a) Within twelve months of the effective date of this state
15 becoming a member state of the agreement, registers under RCW
16 82.32.030(3) to collect and remit to the department the applicable
17 taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW
18 on sales made to buyers in this state in accordance with the terms of
19 the agreement, if the seller was not otherwise registered in this state
20 in the twelve-month period preceding the effective date of this state
21 becoming a member state of the agreement; and

22 (b) Continues to be registered and continues to collect and remit
23 to the department the applicable taxes imposed or authorized under
24 chapters 82.08, 82.12, and 82.14 RCW for a period of at least thirty-
25 six months, absent the seller's fraud or intentional misrepresentation
26 of a material fact.

27 (2) The provisions of subsection (1) of this section preclude an
28 assessment for taxes imposed or authorized under chapters 82.08, 82.12,
29 and 82.14 RCW for sales made to buyers during the period the seller was
30 not registered in this state.

31 (3) The provisions of this section do not apply to any seller with
32 respect to:

33 (a) Any matter or matters for which the seller, before registering
34 to collect and remit the applicable taxes imposed or authorized under
35 chapters 82.08, 82.12, and 82.14 RCW, received notice from the

1 department of the commencement of an audit and which audit is not yet
2 finally resolved including any related administrative and judicial
3 processes;

4 (b) Taxes imposed or authorized under chapters 82.08, 82.12, and
5 82.14 RCW and collected or remitted to the department by the seller; or

6 (c) That seller's liability for taxes imposed or authorized under
7 chapters 82.08, 82.12, and 82.14 RCW in that seller's capacity as a
8 buyer.

9 (4) The limitation periods for making an assessment or correction
10 of an assessment prescribed in RCW 82.32.050(3) and 82.32.100(3) do not
11 run during the thirty-six month period in subsection (1)(b) of this
12 section.

13 **PART V**
14 **SOURCING**

15 NEW SECTION. **Sec. 501.** A new section is added to chapter 82.32
16 RCW to read as follows:

17 (1) Except as provided in subsections (5), (6), (7), and (8) of
18 this section, for purposes of collecting or paying sales or use taxes
19 to the appropriate jurisdictions, all sales at retail shall be sourced
20 in accordance with this subsection and subsections (2) through (4) of
21 this section.

22 (a) When tangible personal property, an extended warranty, or a
23 service defined as a retail sale under RCW 82.04.050 is received by the
24 purchaser at a business location of the seller, the sale is sourced to
25 that business location.

26 (b) When the tangible personal property, extended warranty, or a
27 service defined as a retail sale under RCW 82.04.050 is not received by
28 the purchaser at a business location of the seller, the sale is sourced
29 to the location where receipt by the purchaser or the purchaser's
30 donee, designated as such by the purchaser, occurs, including the
31 location indicated by instructions for delivery to the purchaser or
32 donee, known to the seller.

33 (c) When (a) and (b) of this subsection do not apply, the sale is
34 sourced to the location indicated by an address for the purchaser that
35 is available from the business records of the seller that are

1 maintained in the ordinary course of the seller's business when use of
2 this address does not constitute bad faith.

3 (d) When (a), (b), and (c) of this subsection do not apply, the
4 sale is sourced to the location indicated by an address for the
5 purchaser obtained during the consummation of the sale, including the
6 address of a purchaser's payment instrument, if no other address is
7 available, when use of this address does not constitute bad faith.

8 (e) When (a), (b), (c), or (d) of this subsection do not apply,
9 including the circumstance where the seller is without sufficient
10 information to apply those provisions, then the location shall be
11 determined by the address from which tangible personal property was
12 shipped, from which the digital good or the computer software delivered
13 electronically was first available for transmission by the seller, or
14 from which the extended warranty or service defined as a retail sale
15 under RCW 82.04.050 was provided, disregarding for these purposes any
16 location that merely provided the digital transfer of the product sold.

17 (2) The lease or rental of tangible personal property, other than
18 property identified in subsection (3) or (4) of this section, shall be
19 sourced as provided in this subsection.

20 (a) For a lease or rental that requires recurring periodic
21 payments, the first periodic payment is sourced the same as a retail
22 sale in accordance with subsection (1) of this section. Periodic
23 payments made subsequent to the first payment are sourced to the
24 primary property location for each period covered by the payment. The
25 primary property location shall be as indicated by an address for the
26 property provided by the lessee that is available to the lessor from
27 its records maintained in the ordinary course of business, when use of
28 this address does not constitute bad faith. The property location is
29 not altered by intermittent use at different locations, such as use of
30 business property that accompanies employees on business trips and
31 service calls.

32 (b) For a lease or rental that does not require recurring periodic
33 payments, the payment is sourced the same as a retail sale in
34 accordance with subsection (1) of this section.

35 (c) This subsection (2) does not affect the imposition or
36 computation of sales or use tax on leases or rentals based on a lump
37 sum or accelerated basis, or on the acquisition of property for lease.

1 (3) The lease or rental of motor vehicles, trailers, semitrailers,
2 or aircraft that do not qualify as transportation equipment shall be
3 sourced as provided in this subsection.

4 (a) For a lease or rental that requires recurring periodic
5 payments, each periodic payment is sourced to the primary property
6 location. The primary property location is as indicated by an address
7 for the property provided by the lessee that is available to the lessor
8 from its records maintained in the ordinary course of business, when
9 use of this address does not constitute bad faith. This location is
10 not altered by intermittent use at different locations.

11 (b) For a lease or rental that does not require recurring periodic
12 payments, the payment is sourced the same as a retail sale in
13 accordance with subsection (1) of this section.

14 (c) This subsection does not affect the imposition or computation
15 of sales or use tax on leases or rentals based on a lump sum or
16 accelerated basis, or on the acquisition of property for lease.

17 (4) The retail sale, including lease or rental, of transportation
18 equipment shall be sourced the same as a retail sale in accordance with
19 subsection (1) of this section.

20 (5)(a) A purchaser that is a business and is not a holder of a
21 direct pay permit that knows at the time of purchase of a digital good,
22 computer software, or a service that the digital good, computer
23 software, or service will be concurrently available for use in more
24 than one jurisdiction shall either deliver to the seller in conjunction
25 with its purchase an exemption certificate claiming multiple points of
26 use or meet the requirements of subsection (5)(b) or (c) of this
27 section. Computer software, for purposes of this subsection, includes,
28 but is not limited to, computer software delivered electronically, by
29 load and leave, or in tangible form. Computer software received in
30 person by a business purchaser at a business location of the seller is
31 not included.

32 (i) Upon receipt of an exemption certificate claiming multiple
33 points of use, the seller is relieved of all obligation to collect,
34 pay, or remit the applicable tax and the purchaser is obligated to
35 collect, pay, or remit the applicable tax to the appropriate
36 jurisdiction.

37 (ii) A purchaser delivering an exemption certificate claiming
38 multiple points of use may use any reasonable, but consistent and

1 uniform, method of apportionment that is supported by the purchaser's
2 books and records as they exist at the time the transaction is reported
3 for sales or use tax purposes.

4 (iii) A purchaser delivering an exemption certificate claiming
5 multiple points of use shall report and pay the appropriate tax to each
6 jurisdiction where concurrent use occurs. The tax due will be
7 calculated as if the apportioned amount of the digital good, computer
8 software, or service had been delivered to each jurisdiction to which
9 the sale is apportioned pursuant to (a)(ii) of this subsection.

10 (iv) The exemption certificate claiming multiple points of use
11 shall remain in effect for all future sales by the seller to the
12 purchaser, except as to the subsequent sales' specific apportionment
13 that is governed by the principles of (a)(ii) and (iii) of this
14 subsection, until it is revoked in writing.

15 (b) When the seller knows that the product will be concurrently
16 available for use in more than one jurisdiction, but the purchaser does
17 not provide an exemption certificate claiming multiple points of use as
18 provided in (a) of this subsection, the seller may work with the
19 purchaser to produce the correct apportionment. The purchaser and
20 seller may use any reasonable, but consistent and uniform, method of
21 apportionment that is supported by the seller's and purchaser's
22 business records as they exist at the time the transaction is reported
23 for sales or use tax purposes. If the purchaser certifies to the
24 accuracy of the apportionment and the seller accepts the certification,
25 the seller shall collect and remit the tax pursuant to (a)(iii) of this
26 subsection. In the absence of bad faith, the seller is relieved of any
27 further obligation to collect tax on any transaction where the seller
28 has collected tax pursuant to the information certified by the
29 purchaser.

30 (c) When the seller knows that the product will be concurrently
31 available for use in more than one jurisdiction and the purchaser does
32 not have a direct pay permit and does not provide the seller with an
33 exemption certificate claiming multiple points of use as provided in
34 (a) of this subsection, or certification pursuant to (b) of this
35 subsection, the seller shall collect and remit the tax based on
36 subsections (1) through (4) of this section.

37 (d) A holder of a direct pay permit shall not be required to
38 deliver an exemption certificate claiming multiple points of use to the

1 seller. A direct pay permit holder shall follow (a)(ii) and (iii) of
2 this subsection in apportioning the tax due on the sale or use of a
3 digital good, computer software, or service that will be concurrently
4 available for use in more than one jurisdiction.

5 (e) This section does not limit a person's obligation for sales or
6 use tax to any state in which the qualifying purchases are concurrently
7 available for use, nor does it limit a person's ability under local,
8 state, federal, or constitutional law to claim a credit for sales or
9 use taxes legally due and paid to other jurisdictions.

10 (6)(a) A purchaser of direct mail that is not a holder of a direct
11 pay permit shall provide to the seller in conjunction with the purchase
12 either a direct mail form or information that shows the jurisdictions
13 to which the direct mail is delivered to recipients.

14 (i) Upon receipt of the direct mail form, the seller is relieved of
15 all obligations to collect, pay, or remit the applicable tax and the
16 purchaser is obligated to pay or remit the applicable tax on a direct
17 pay basis. A direct mail form shall remain in effect for all future
18 sales of direct mail by the seller to the purchaser until it is revoked
19 in writing.

20 (ii) Upon receipt of information from the purchaser showing the
21 jurisdictions to which the direct mail is delivered to recipients, the
22 seller shall collect the tax according to the delivery information
23 provided by the purchaser. In the absence of bad faith, the seller is
24 relieved of any further obligation to collect tax on any transaction
25 where the seller has collected tax pursuant to the delivery information
26 provided by the purchaser.

27 (b) If the purchaser of direct mail does not have a direct pay
28 permit and does not provide the seller with either a direct mail form
29 or delivery information as required by (a) of this subsection, the
30 seller shall collect the tax according to subsection (1)(e) of this
31 section. This subsection does not limit a purchaser's obligation for
32 sales or use tax to any state to which the direct mail is delivered.

33 (c) If a purchaser of direct mail provides the seller with
34 documentation of direct pay authority, the purchaser is not required to
35 provide a direct mail form or delivery information to the seller.

36 (7) The following are sourced to the location at or from which
37 delivery is made to the consumer:

38 (a) A retail sale of watercraft;

1 (b) A retail sale of a modular home, manufactured home, or mobile
2 home;

3 (c) A retail sale, excluding the lease and rental, of a motor
4 vehicle, trailer, semitrailer, or aircraft, that do not qualify as
5 transportation equipment; and

6 (d) Until January 1, 2008, a retail sale of tangible personal
7 property made by a person engaged in the business of selling flowers.
8 The rules for the sourcing of retail sales of flowers delivered with
9 telegraphic instructions in WAC 458-20-158, as effective on July 1,
10 1970, shall remain in effect until January 1, 2008.

11 (8) A retail sale of the providing of telecommunications services
12 shall be sourced in accordance with RCW 82.32.520.

13 (9) The definitions in this subsection apply throughout this
14 section.

15 (a) "Delivered electronically" means delivered to the purchaser by
16 means other than tangible storage media.

17 (b) "Direct mail" means printed material delivered or distributed
18 by United States mail or other delivery service to a mass audience or
19 to addressees on a mailing list provided by the purchaser or at the
20 direction of the purchaser when the cost of the items are not billed
21 directly to the recipients. "Direct mail" includes tangible personal
22 property supplied directly or indirectly by the purchaser to the direct
23 mail seller for inclusion in the package containing the printed
24 material. "Direct mail" does not include multiple items of printed
25 material delivered to a single address.

26 (c) "Receive" and "receipt" mean taking possession of tangible
27 personal property, making first use of services, or taking possession
28 or making first use of digital goods, whichever comes first. "Receive"
29 and "receipt" do not include possession by a shipping company on behalf
30 of the purchaser.

31 (d) "Transportation equipment" means:

32 (i) Locomotives and railcars that are used for the carriage of
33 persons or property in interstate commerce;

34 (ii) Trucks and truck tractors with a gross vehicle weight rating
35 of ten thousand one pounds or greater, trailers, semitrailers, or
36 passenger buses that are:

37 (A) Registered through the international registration plan; and

1 (B) Operated under authority of a carrier authorized and
2 certificated by the United States department of transportation or
3 another federal authority to engage in the carriage of persons or
4 property in interstate commerce;

5 (iii) Aircraft that are operated by air carriers authorized and
6 certificated by the United States department of transportation or
7 another federal or foreign authority to engage in the carriage of
8 persons or property in interstate or foreign commerce; or

9 (iv) Containers designed for use on and component parts attached or
10 secured on the items described in (d)(i) through (iii) of this
11 subsection.

12 (10) In those instances where there is no obligation on the part of
13 a seller to collect or remit sales or use tax, the use of tangible
14 personal property or of a service, subject to use tax, is sourced to
15 the place of first use. The definition of use in RCW 82.12.010 applies
16 to this subsection.

17 **Sec. 502.** RCW 82.14.020 and 2005 c 514 s 111 are each amended to
18 read as follows:

19 For purposes of this chapter:

20 (1) ~~((A retail sale consisting solely of the sale of tangible~~
21 ~~personal property shall be deemed to have occurred at the retail outlet~~
22 ~~at or from which delivery is made to the consumer;~~

23 ~~(2) A retail sale consisting essentially of the performance of~~
24 ~~personal, business, or professional services shall be deemed to have~~
25 ~~occurred at the place at which such services were primarily performed,~~
26 ~~except that for the performance of a tow truck service, as defined in~~
27 ~~RCW 46.55.010, the retail sale shall be deemed to have occurred at the~~
28 ~~place of business of the operator of the tow truck service;~~

29 ~~(3) A retail sale consisting of the rental of tangible personal~~
30 ~~property shall be deemed to have occurred (a) in the case of a rental~~
31 ~~involving periodic rental payments, at the place of primary use by the~~
32 ~~lessee during the period covered by each payment, or (b) in all other~~
33 ~~cases, at the place of first use by the lessee;~~

34 ~~(4) A retail sale within the scope of RCW 82.04.050(2), and a~~
35 ~~retail sale of taxable personal property to be installed by the seller~~
36 ~~shall be deemed to have occurred at the place where the labor and~~
37 ~~services involved were primarily performed;~~

1 **CONFIDENTIALITY AND PRIVACY PROTECTIONS FOR PERSONS USING**
2 **CERTIFIED SERVICE PROVIDERS**

3 NEW SECTION. **Sec. 601.** A new section is added to chapter 82.32
4 RCW to read as follows:

5 (1) A fundamental precept of allowing the use of a certified
6 service provider is to preserve the privacy of consumers by protecting
7 their anonymity. With very limited exceptions, a certified service
8 provider shall perform its tax calculation, remittance, and reporting
9 functions without retaining the personally identifiable information of
10 consumers.

11 (2) The department shall provide public notification to consumers,
12 including purchasers claiming exemption from tax, of its practices
13 relating to the collection, use, and retention of personally
14 identifiable information.

15 (3) When personally identifiable information that has been
16 collected and retained is no longer required to ensure the validity of
17 exemptions from taxation by reason of the consumer's status or the
18 intended use of the goods or services purchased, the information shall
19 no longer be retained by the state of Washington.

20 (4) When personally identifiable information regarding an
21 individual is retained by or on behalf of the state of Washington, this
22 state shall provide reasonable access for the individual to his or her
23 own information and a right to correct any inaccurately recorded
24 information.

25 (5) If anyone other than a member state of the agreement, or other
26 than a person authorized by Washington law or the agreement, seeks to
27 discover personally identifiable information, the state of Washington
28 shall make a reasonable and timely effort to notify the individual of
29 the request.

30 (6) The provisions of this section may be enforced by petitioning
31 the superior court of Thurston county for injunctive relief.

32 **PART VII**
33 **TAXABILITY MATRIX**

34 NEW SECTION. **Sec. 701.** A new section is added to chapter 82.32
35 RCW to read as follows:

36 (1) The department shall complete a taxability matrix maintained by

1 the member states of the agreement in downloadable format. The matrix
2 contains terms defined in the agreement. The department shall provide
3 notice of changes in the taxability of products or services listed in
4 the matrix.

5 (2) Sellers and certified service providers are relieved from
6 liability to the state and to local jurisdictions for having charged or
7 collected the incorrect amount of sales or use tax if the error
8 resulted from reliance on erroneous information provided by the
9 department in the taxability matrix.

10 **PART VIII**
11 **DELIVERY CHARGES**

12 NEW SECTION. **Sec. 801.** A new section is added to chapter 82.08
13 RCW to read as follows:

14 When computing the tax levied by RCW 82.08.020, if a shipment
15 consists of taxable tangible personal property and nontaxable tangible
16 personal property, and delivery charges are included in the sales
17 price, the seller must collect and remit tax on the percentage of
18 delivery charges allocated to the taxable tangible personal property,
19 but does not have to collect and remit tax on the percentage allocated
20 to exempt tangible personal property. The seller may use either of the
21 following percentages to determine the taxable portion of the delivery
22 charges:

23 (1) A percentage based on the total sales price of the taxable
24 tangible personal property compared to the total sales price of all
25 tangible personal property in the shipment; or

26 (2) A percentage based on the total weight of the taxable tangible
27 personal property compared to the total weight of all tangible personal
28 property in the shipment.

29 NEW SECTION. **Sec. 802.** A new section is added to chapter 82.12
30 RCW to read as follows:

31 When computing the tax levied by RCW 82.12.020, if a shipment
32 consists of taxable tangible personal property and nontaxable tangible
33 personal property, and delivery charges are included in the purchase
34 price, the consumer must remit tax or the retailer must collect and
35 remit tax on the percentage of delivery charges allocated to the

1 taxable tangible personal property, but does not have to remit or
2 collect and remit tax on the percentage allocated to exempt tangible
3 personal property. The consumer or retailer may use either of the
4 following percentages to determine the taxable portion of the delivery
5 charges:

6 (1) A percentage based on the total purchase price of the taxable
7 tangible personal property compared to the total purchase price of all
8 tangible personal property in the shipment; or

9 (2) A percentage based on the total weight of the taxable tangible
10 personal property compared to the total weight of all tangible personal
11 property in the shipment.

12 **PART IX**

13 **SALES AND USE TAX MITIGATION**

14 NEW SECTION. **Sec. 901.** (1) The legislature finds and declares
15 that:

16 (a) Washington state's participation as a member state in the
17 streamlined sales and use tax agreement benefits the state, all its
18 local taxing jurisdictions, and its retailing industry, by increasing
19 state and local revenues, improving the state's business climate, and
20 standardizing and simplifying the state's tax structure;

21 (b) Participation in the streamlined sales and use tax agreement is
22 a matter of statewide concern and is in the best interests of the
23 state, the general public, and all local jurisdictions that impose a
24 sales and use tax under applicable law;

25 (c) Participation in the streamlined sales and use tax agreement
26 requires the adoption of the agreement's sourcing provisions, which
27 changes the location in which a retail sale of delivered tangible
28 personal property occurs from the point of origin to the point of
29 destination;

30 (d) Changes in the state's sourcing law provisions to conform with
31 the streamlined sales and use tax agreement will cause sales and use
32 tax revenues to shift among local taxing jurisdictions. The
33 legislature finds that there will be an unintended adverse impact on
34 local taxing jurisdictions that receive less revenues because local tax
35 revenues will be redistributed, with revenue increases for some
36 jurisdictions and reductions for others, due solely to changes in state

1 sales tax sourcing rules to be implemented under section 501 of this
2 act, even though no local taxing jurisdiction has changed its tax rate
3 or tax base;

4 (e) The purpose of providing mitigation to such jurisdictions is to
5 mitigate the unintended revenue redistribution effect of the sourcing
6 law changes among local governments;

7 (f) It is in the best interest of the state and all its
8 subdivisions to mitigate the adverse effects of amending the state's
9 sales and use tax sourcing provisions to be in conformance with the
10 streamlined sales and use tax agreement;

11 (g) Additionally, changes in sourcing laws may have negative
12 implications for industry sectors such as warehousing and
13 manufacturing, as well as jurisdictions that house a concentration of
14 these industries and have made zoning decisions, infrastructure
15 investments, bonding decisions, and land use policy decisions based on
16 point of origin sales tax rules in place before the effective date of
17 this section, and the mitigation provided by sections 901 through 905
18 of this act is intended to help offset those negative implications; and

19 (h) It is important that the state of Washington maintain its
20 supply of industrial land for present and future economic development
21 activities, and local governments taking advantage of the mitigation
22 provided by sections 901 through 905 of this act should strive to
23 maintain the supply of industrial land available for economic
24 development efforts.

25 (2) The legislature intends that the streamlined sales and use tax
26 mitigation account established in section 902 of this act have the
27 objective of mitigating, for negatively affected local taxing
28 jurisdictions, the net local sales and use tax revenue reductions
29 incurred as a result of section 501 of this act.

30 NEW SECTION. **Sec. 902.** A new section is added to chapter 82.14
31 RCW to read as follows:

32 (1) The streamlined sales and use tax mitigation account is created
33 in the state treasury. Moneys in the account may be spent only after
34 appropriation. Expenditures from the account may be used only for the
35 purpose of mitigating the negative fiscal impacts to local taxing
36 jurisdictions as a result of section 501 of this act.

1 (2) Beginning July 1, 2007, the state treasurer, as directed by the
2 department, shall distribute the funds in the streamlined sales and use
3 tax mitigation account to local taxing jurisdictions in accordance with
4 section 903 of this act.

5 (3) The definitions in this subsection apply throughout this
6 section, RCW 82.14.390, and section 903 of this act.

7 (a) "Agreement" means the same as in RCW 82.32.020.

8 (b) "Local taxing jurisdiction" means counties, cities,
9 transportation authorities under RCW 82.14.045, public facilities
10 districts under chapters 36.100 and 35.57 RCW, public transportation
11 benefit areas under RCW 82.14.440, and regional transit authorities
12 under chapter 81.112 RCW, that impose a sales and use tax.

13 (c) "Loss" or "losses" means the local sales and use tax revenue
14 reduction to a local taxing jurisdiction resulting from the sourcing
15 provisions in section 501 of this act.

16 (d) "Net loss" or "net losses" means a loss offset by any voluntary
17 compliance revenue.

18 (e) "Voluntary compliance revenue" means the local sales and use
19 tax revenue gain to each local taxing jurisdiction reported to the
20 department from persons registering through the central registration
21 system authorized under the agreement.

22 (f) "Working day" has the same meaning as in RCW 82.45.180.

23 NEW SECTION. **Sec. 903.** A new section is added to chapter 82.14
24 RCW to read as follows:

25 (1) Beginning July 1, 2007, and each July 1st thereafter, in order
26 to mitigate local sales and use tax revenue losses as a result of the
27 sourcing provisions of the streamlined sales and use tax agreement
28 under this title, the state treasurer shall transfer into the
29 streamlined sales and use tax mitigation account from the general fund
30 the sum of twenty-five million dollars, subject to appropriation.

31 (2) Beginning July 1, 2007, and continuing until the department
32 determines annual losses under subsection (3) of this section, the
33 department shall determine the amount of local sales and use tax net
34 loss each local taxing jurisdiction experiences as a result of the
35 sourcing provisions of the streamlined sales and use tax agreement
36 under this title each calendar quarter. The department shall determine
37 losses by analyzing and comparing data from tax return information and

1 tax collections for each local taxing jurisdiction before and after the
2 effective date of this section on a calendar quarter basis. The
3 department's analysis may be revised and supplemented in consultation
4 with the oversight committee as provided in subsection (4) of this
5 section. To determine net losses, the department shall reduce losses
6 by the amount of voluntary compliance revenue for the calendar quarter
7 analyzed. Beginning December 31, 2007, distributions shall be made
8 quarterly from the streamlined sales and use tax mitigation account by
9 the state treasurer, as directed by the department, to each local
10 taxing jurisdiction, other than public facilities districts for losses
11 in respect to taxes imposed under the authority of RCW 82.14.390, in an
12 amount representing its net losses for the previous calendar quarter.
13 Distributions shall be made on the last working day of each calendar
14 quarter.

15 (3) By December 31, 2008, or such later date the department in
16 consultation with the oversight committee determines that sufficient
17 data is available, the department shall determine each local taxing
18 jurisdiction's annual loss. The department shall determine annual
19 losses by comparing at least twelve months of data from tax return
20 information and tax collections for each local taxing jurisdiction
21 before and after the effective date of this section. Beginning the
22 calendar quarter in which the department determines annual losses, and
23 each calendar quarter thereafter, distributions shall be made from the
24 streamlined sales and use tax mitigation account by the state treasurer
25 on the last working day of the calendar quarter, as directed by the
26 department, to each local taxing jurisdiction, other than public
27 facilities districts for losses in respect to taxes imposed under the
28 authority of RCW 82.14.390, in an amount representing one-fourth of the
29 jurisdiction's annual loss reduced by voluntary compliance revenue
30 reported during the previous calendar quarter. The department's
31 analysis of annual losses shall be reviewed by December 1st of each
32 year and may be revised and supplemented in consultation with the
33 oversight committee as provided in subsection (4) of this section.

34 (4) The department shall convene an oversight committee to assist
35 in the determination of losses. The committee shall include one
36 representative of one city whose revenues are increased, one
37 representative of one city whose revenues are reduced, one
38 representative of one county whose revenues are increased, one

1 representative of one county whose revenues are decreased, one
2 representative of one transportation authority under RCW 82.14.045
3 whose revenues are increased, and one representative of one
4 transportation authority under RCW 82.14.045 whose revenues are
5 reduced, as a result of section 501 of this act. Beginning July 1,
6 2007, the oversight committee shall meet quarterly with the department
7 to review and provide additional input and direction on the
8 department's analyses of losses. Local taxing jurisdictions may also
9 present to the oversight committee additional information to improve
10 the department's analyses of the jurisdiction's loss. Beginning
11 January 1, 2009, the oversight committee shall meet at least annually
12 with the department by December 1st.

13 (5) If the amount in the streamlined sales and use tax mitigation
14 account is insufficient to fully mitigate each adversely affected local
15 taxing jurisdiction, other than public facilities districts for losses
16 in respect to taxes imposed under the authority of RCW 82.14.390, in an
17 amount representing its net loss, based on the determinations made by
18 the department according to subsections (2) and (3) of this section,
19 the distributions shall be ratably reduced.

20 (6) If any amount remains in the streamlined sales and use tax
21 mitigation account after the last distribution made in any fiscal
22 biennium, the state treasurer shall transfer that amount into the
23 general fund at the end of that biennium.

24 (7) The rule-making provisions of chapter 34.05 RCW do not apply to
25 this section.

26 (8) No distributions may be made under this section unless funds
27 are appropriated as required by section 902(1) of this act.

28 **Sec. 904.** RCW 82.14.390 and 2002 c 363 s 4 are each amended to
29 read as follows:

30 (1) Except as provided in subsection (~~((6))~~) (7) of this section,
31 the governing body of a public facilities district created before July
32 31, 2002, under chapter 35.57 or 36.100 RCW that commences construction
33 of a new regional center, or improvement or rehabilitation of an
34 existing new regional center, before January 1, 2004, may impose a
35 sales and use tax in accordance with the terms of this chapter. The
36 tax is in addition to other taxes authorized by law and shall be
37 collected from those persons who are taxable by the state under

1 chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event
2 within the public facilities district. The rate of tax shall not
3 exceed 0.033 percent of the selling price in the case of a sales tax or
4 value of the article used in the case of a use tax.

5 (2)(a) The governing body of a public facilities district imposing
6 a sales and use tax under the authority of this section may increase
7 the rate of tax up to 0.037 percent if, within three fiscal years of
8 the effective date of this section, the department determines that, as
9 a result of section 501 of this act, a public facilities district's
10 sales and use tax collections for fiscal years after the effective date
11 of this section have been reduced by a net loss of at least 0.50
12 percent from the fiscal year before the effective date of this section.
13 The fiscal year in which this section becomes effective is the first
14 fiscal year after the effective date of this section.

15 (b) The department shall determine sales and use tax collection net
16 losses under this section as provided in section 903 (2) and (3) of
17 this act. The department shall provide written notice of its
18 determinations to public facilities districts. Determinations by the
19 department of a public facilities district's sales and use tax
20 collection net losses as a result of section 501 of this act are final
21 and not appealable.

22 (c) A public facilities district may increase its rate of tax after
23 it has received written notice from the department as provided in (b)
24 of this subsection. The increase in the rate of tax must be made in
25 0.001 percent increments and must be the least amount necessary to
26 mitigate the net loss in sales and use tax collections as a result of
27 section 501 of this act. The increase in the rate of tax is subject to
28 RCW 82.14.055.

29 (3) The tax imposed under subsection (1) of this section shall be
30 deducted from the amount of tax otherwise required to be collected or
31 paid over to the department of revenue under chapter 82.08 or 82.12
32 RCW. The department of revenue shall perform the collection of such
33 taxes on behalf of the county at no cost to the public facilities
34 district.

35 ~~((+3))~~ (4) No tax may be collected under this section before
36 August 1, 2000. The tax imposed in this section shall expire when the
37 bonds issued for the construction of the regional center and related

1 parking facilities are retired, but not more than twenty-five years
2 after the tax is first collected.

3 ~~((4))~~ (5) Moneys collected under this section shall only be used
4 for the purposes set forth in RCW 35.57.020 and must be matched with an
5 amount from other public or private sources equal to thirty-three
6 percent of the amount collected under this section, provided that
7 amounts generated from nonvoter approved taxes authorized under chapter
8 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100
9 RCW shall not constitute a public or private source. For the purpose
10 of this section, public or private sources includes, but is not limited
11 to cash or in-kind contributions used in all phases of the development
12 or improvement of the regional center, land that is donated and used
13 for the siting of the regional center, cash or in-kind contributions
14 from public or private foundations, or amounts attributed to private
15 sector partners as part of a public and private partnership agreement
16 negotiated by the public facilities district.

17 ~~((5))~~ (6) The combined total tax levied under this section shall
18 not be greater than ~~((0.033))~~ 0.037 percent. If both a public
19 facilities district created under chapter 35.57 RCW and a public
20 facilities district created under chapter 36.100 RCW impose a tax under
21 this section, the tax imposed by a public facilities district created
22 under chapter 35.57 RCW shall be credited against the tax imposed by a
23 public facilities district created under chapter 36.100 RCW.

24 ~~((6))~~ (7) A public facilities district created under chapter
25 36.100 RCW is not eligible to impose the tax under this section if the
26 legislative authority of the county where the public facilities
27 district is located has imposed a sales and use tax under RCW
28 82.14.0485 or 82.14.0494.

29 NEW SECTION. **Sec. 905.** A new section is added to chapter 44.28
30 RCW to read as follows:

31 (1) During calendar year 2009, the joint legislative audit and
32 review committee shall review the mitigation provisions for local
33 taxing jurisdictions under RCW 82.14.390 and section 903 of this act to
34 determine the extent to which the mitigation provisions address the
35 needs of local taxing jurisdictions for which the sourcing provisions
36 in section 501 of this act had the greatest fiscal impact. In
37 conducting the study, the committee shall solicit input from the

1 oversight committee created in section 903 of this act and additional
2 local taxing jurisdictions as the committee determines. The department
3 of revenue and the state treasurer shall provide the committee with any
4 data within their purview that the committee considers necessary to
5 conduct the review. The committee shall report to the legislature the
6 results of its findings, and any recommendations for changes to the
7 mitigation provisions under RCW 82.14.390 and section 903 of this act,
8 by December 31, 2009.

9 (2) The definitions in section 902 of this act apply to this
10 section.

11 (3) This section expires July 1, 2010.

12 **PART X**

13 **TELECOMMUNICATIONS PROVISIONS**

14 **Sec. 1001.** RCW 82.32.520 and 2004 c 153 s 403 are each amended to
15 read as follows:

16 (1) Except for the defined telecommunications services listed in
17 subsection (3) of this section, the sale of ((telephone))
18 telecommunications service as defined in RCW 82.04.065 sold on a call-
19 by-call basis shall be sourced to (a) each level of taxing jurisdiction
20 where the call originates and terminates in that jurisdiction or (b)
21 each level of taxing jurisdiction where the call either originates or
22 terminates and in which the service address is also located.

23 (2) Except for the defined telecommunications services listed in
24 subsection (3) of this section, a sale of ((telephone))
25 telecommunications service as defined in RCW 82.04.065 sold on a basis
26 other than a call-by-call basis, is sourced to the customer's place of
27 primary use.

28 (3) The sales of ((telephone)) telecommunications service as
29 defined in RCW 82.04.065 that are listed in subsection (3) of this
30 section shall be sourced to each level of taxing jurisdiction as
31 follows:

32 (a) A sale of mobile telecommunications services, other than air-
33 ground radiotelephone service and prepaid calling service, is sourced
34 to the customer's place of primary use as required by RCW 82.08.066.

35 (b) A sale of postpaid calling service is sourced to the
36 origination point of the telecommunications signal as first identified

1 by either (i) the seller's telecommunications system, or (ii)
2 information received by the seller from its service provider, where the
3 system used to transport such signals is not that of the seller.

4 (c) A sale of prepaid calling service or a sale of a prepaid
5 wireless calling service is sourced as follows:

6 (i) When a prepaid calling service is received by the purchaser at
7 a business location of the seller, the sale is sourced to that business
8 location;

9 (ii) When a prepaid calling service is not received by the
10 purchaser at a business location of the seller, the sale is sourced to
11 the location where receipt by the purchaser or the purchaser's donee,
12 designated as such by the purchaser, occurs, including the location
13 indicated by instructions for delivery to the purchaser or donee, known
14 to the seller;

15 (iii) When (c)(i) and (ii) of this subsection do not apply, the
16 sale is sourced to the location indicated by an address for the
17 purchaser that is available from the business records of the seller
18 that are maintained in the ordinary course of the seller's business
19 when use of this address does not constitute bad faith;

20 (iv) When (c)(i), (ii), and (iii) of this subsection do not apply,
21 the sale is sourced to the location indicated by an address for the
22 purchaser obtained during the consummation of the sale, including the
23 address of a purchaser's payment instrument, if no other address is
24 available, when use of this address does not constitute bad faith;

25 (v) When (c)(i), (ii), (iii), and (iv) of this subsection do not
26 apply, including the circumstance where the seller is without
27 sufficient information to apply those provisions, then the location
28 shall be determined by the address from which tangible personal
29 property was shipped, from which the digital good or the computer
30 software delivered electronically was first available for transmission
31 by the seller, or from which the service defined as a retail sale under
32 RCW 82.04.050 was provided, disregarding for these purposes any
33 location that merely provided the digital transfer of the product sold;

34 (vi) In the case of a sale of (~~mobile telecommunications service~~
35 ~~that is a prepaid telecommunications~~) prepaid wireless calling
36 service, (c)(v) of this subsection shall include as an option the
37 location associated with the mobile telephone number.

1 (d) A sale of a private communication service is sourced as
2 follows:

3 (i) Service for a separate charge related to a customer channel
4 termination point is sourced to each level of jurisdiction in which
5 such customer channel termination point is located.

6 (ii) Service where all customer termination points are located
7 entirely within one jurisdiction or levels of jurisdiction is sourced
8 in such jurisdiction in which the customer channel termination points
9 are located.

10 (iii) Service for segments of a channel between two customer
11 channel termination points located in different jurisdictions and which
12 segment of channel are separately charged is sourced fifty percent in
13 each level of jurisdiction in which the customer channel termination
14 points are located.

15 (iv) Service for segments of a channel located in more than one
16 jurisdiction or levels of jurisdiction and which segments are not
17 separately billed is sourced in each jurisdiction based on the
18 percentage determined by dividing the number of customer channel
19 termination points in the jurisdiction by the total number of customer
20 channel termination points.

21 (4) The definitions in this subsection apply throughout this
22 chapter.

23 (a) "Air-ground radiotelephone service" means air-ground radio
24 service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered
25 as of January 1, 2003, in which common carriers are authorized to offer
26 and provide radio telecommunications service for hire to subscribers in
27 aircraft.

28 (b) "Call-by-call basis" means any method of charging for
29 telecommunications services where the price is measured by individual
30 calls.

31 (c) "Communications channel" means a physical or virtual path of
32 communications over which signals are transmitted between or among
33 customer channel termination points.

34 (d) "Customer" means the person or entity that contracts with the
35 seller of telecommunications services. If the end user of
36 telecommunications services is not the contracting party, the end user
37 of the telecommunications service is the customer of the
38 telecommunications service. "Customer" does not include a reseller of

1 telecommunications service or for mobile telecommunications service of
2 a serving carrier under an agreement to serve the customer outside the
3 home service provider's licensed service area.

4 (e) "Customer channel termination point" means the location where
5 the customer either inputs or receives the communications.

6 (f) "End user" means the person who uses the telecommunications
7 service. In the case of an entity, the term end user means the
8 individual who uses the service on behalf of the entity.

9 (g) "Home service provider" means the same as that term is defined
10 in RCW 82.04.065.

11 (h) "Mobile telecommunications service" means the same as that term
12 is defined in RCW 82.04.065.

13 (i) "Place of primary use" means the street address representative
14 of where the customer's use of the telecommunications service primarily
15 occurs, which must be the residential street address or the primary
16 business street address of the customer. In the case of mobile
17 telecommunications services, "place of primary use" must be within the
18 licensed service area of the home service provider.

19 (j) "Postpaid calling service" means the telecommunications service
20 obtained by making a payment on a call-by-call basis either through the
21 use of a credit card or payment mechanism such as a bank card, travel
22 card, credit card, or debit card, or by charge made to which a
23 telephone number that is not associated with the origination or
24 termination of the telecommunications service. A postpaid calling
25 service includes a telecommunications service, except a prepaid
26 wireless calling service, that would be a prepaid calling service
27 except it is not exclusively a telecommunications service.

28 (k) "Prepaid calling service" means the right to access exclusively
29 telecommunications services, which must be paid for in advance and
30 which enables the origination of calls using an access number and/or
31 authorization code, whether manually or electronically dialed, and that
32 is sold in predetermined units or dollars of which the number declines
33 with use in a known amount.

34 (l) "Prepaid wireless calling service" means a telecommunications
35 service that provides the right to use mobile wireless service as well
36 as other nontelecommunications services, including the download of
37 digital products delivered electronically, content, and ancillary

1 services, which must be paid for in advance that is sold in
2 predetermined units or dollars of which the number declines with use in
3 a known amount.

4 (m) "Private communication service" means a telecommunications
5 service that entitles the customer to exclusive or priority use of a
6 communications channel or group of channels between or among
7 termination points, regardless of the manner in which such channel or
8 channels are connected, and includes switching capacity, extension
9 lines, stations, and any other associated services that are provided in
10 connection with the use of such channel or channels.

11 ~~((m))~~ (n) "Service address" means:

12 (i) The location of the telecommunications equipment to which a
13 customer's call is charged and from which the call originates or
14 terminates, regardless of where the call is billed or paid;

15 (ii) If the location in ~~((m))~~ (n)(i) of this subsection is not
16 known, the origination point of the signal of the telecommunications
17 services first identified by either the seller's telecommunications
18 system or in information received by the seller from its service
19 provider, where the system used to transport such signals is not that
20 of the seller;

21 (iii) If the locations in ~~((m))~~ (n)(i) and (ii) of this
22 subsection are not known, the location of the customer's place of
23 primary use.

24 **Sec. 1002.** RCW 82.04.065 and 2002 c 67 s 2 are each amended to
25 read as follows:

26 (1) "Competitive telephone service" means the providing by any
27 person of telecommunications equipment or apparatus, or service related
28 to that equipment or apparatus such as repair or maintenance service,
29 if the equipment or apparatus is of a type which can be provided by
30 persons that are not subject to regulation as telephone companies under
31 Title 80 RCW and for which a separate charge is made.

32 ~~((("Network telephone service" means the providing by any person
33 of access to a telephone network, telephone network switching service,
34 toll service, or coin telephone services, or the providing of
35 telephonic, video, data, or similar communication or transmission for
36 hire, via a telephone network, toll line or channel, cable, microwave,
37 or similar communication or transmission system. "Network telephone~~

1 ~~service" includes the provision of transmission to and from the site of~~
2 ~~an internet provider via a telephone network, toll line or channel,~~
3 ~~cable, microwave, or similar communication or transmission system.~~
4 ~~"Network telephone service" does not include the providing of~~
5 ~~competitive telephone service, the providing of cable television~~
6 ~~service, the providing of broadcast services by radio or television~~
7 ~~stations, nor the provision of internet service as defined in RCW~~
8 ~~82.04.297, including the reception of dial in connection, provided at~~
9 ~~the site of the internet service provider.~~

10 ~~(3) "Telephone service" means competitive telephone service or~~
11 ~~network telephone service, or both, as defined in subsections (1) and~~
12 ~~(2) of this section.~~

13 ~~(4) "Telephone business" means the business of providing network~~
14 ~~telephone service, as defined in subsection (2) of this section. It~~
15 ~~includes cooperative or farmer line telephone companies or associations~~
16 ~~operating an exchange.~~

17 ~~(5)) "Ancillary services" means services that are associated with~~
18 ~~or incidental to the provision of "telecommunications services,"~~
19 ~~including but not limited to "detailed telecommunications billing,"~~
20 ~~"directory assistance," "vertical service," and "voice mail services."~~

21 ~~(3) "Conference-bridging service" means an ancillary service that~~
22 ~~links two or more participants of an audio or video conference call and~~
23 ~~may include the provision of a telephone number. "Conference-bridging~~
24 ~~service" does not include the telecommunications services used to reach~~
25 ~~the conference bridge.~~

26 ~~(4) "Detailed telecommunications billing service" means an~~
27 ~~ancillary service of separately stating information pertaining to~~
28 ~~individual calls on a customer's billing statement.~~

29 ~~(5) "Directory assistance" means an ancillary service of providing~~
30 ~~telephone number information, and/or address information.~~

31 ~~(6) "Vertical service" means an ancillary service that is offered~~
32 ~~in connection with one or more telecommunications services, that offers~~
33 ~~advanced calling features that allow customers to identify callers and~~
34 ~~to manage multiple calls and call connections, including conference-~~
35 ~~bridging services.~~

36 ~~(7) "Voice mail service" means an ancillary service that enables~~
37 ~~the customer to store, send, or receive recorded messages. "Voice mail~~

1 service" does not include any vertical services that the customer may
2 be required to have in order to use the voice mail service.

3 (8) "Telecommunications service" means the electronic transmission,
4 conveyance, or routing of voice, data, audio, video, or any other
5 information or signals to a point, or between or among points.
6 "Telecommunications service" includes such transmission, conveyance, or
7 routing in which computer processing applications are used to act on
8 the form, code, or protocol of the content for purposes of
9 transmission, conveyance, or routing without regard to whether such
10 service is referred to as voice over internet protocol services or is
11 classified by the federal communications commission as enhanced or
12 value added. "Telecommunications service" does not include:

13 (a) Data processing and information services that allow data to be
14 generated, acquired, stored, processed, or retrieved and delivered by
15 an electronic transmission to a purchaser where such purchaser's
16 primary purpose for the underlying transaction is the processed data or
17 information;

18 (b) Installation or maintenance of wiring or equipment on a
19 customer's premises;

20 (c) Tangible personal property;

21 (d) Advertising, including but not limited to directory
22 advertising;

23 (e) Billing and collection services provided to third parties;

24 (f) Internet access service;

25 (g) Radio and television audio and video programming services,
26 regardless of the medium, including the furnishing of transmission,
27 conveyance, and routing of such services by the programming service
28 provider. Radio and television audio and video programming services
29 include but are not limited to cable service as defined in 47 U.S.C.
30 Sec. 522(6) and audio and video programming services delivered by
31 commercial mobile radio service providers, as defined in section 20.3,
32 Title 47 C.F.R.;

33 (h) Ancillary services; or

34 (i) Digital products delivered electronically, including but not
35 limited to software, music, video, reading materials, or ring tones.

36 (9) "800 service" means a telecommunications service that allows a
37 caller to dial a toll-free number without incurring a charge for the

1 call. The service is typically marketed under the name "800," "855,"
2 "866," "877," and "888" toll-free calling, and any subsequent numbers
3 designated by the federal communications commission.

4 (10) "900 service" means an inbound toll telecommunications service
5 purchased by a subscriber that allows the subscriber's customers to
6 call in to the subscriber's prerecorded announcement or live service.
7 "900 service" does not include the charge for: Collection services
8 provided by the seller of the telecommunications services to the
9 subscriber, or services or products sold by the subscriber to the
10 subscriber's customer. The service is typically marketed under the
11 name "900" service, and any subsequent numbers designated by the
12 federal communications commission.

13 (11) "Fixed wireless service" means a telecommunications service
14 that provides radio communication between fixed points.

15 (12) "Mobile wireless service" means a telecommunications service
16 that is transmitted, conveyed, or routed regardless of the technology
17 used, whereby the origination and/or termination points of the
18 transmission, conveyance, or routing are not fixed, including, by way
19 of example only, telecommunications services that are provided by a
20 commercial mobile radio service provider.

21 (13) "Paging service" means a telecommunications service that
22 provides transmission of coded radio signals for the purpose of
23 activating specific pagers; these transmissions may include messages
24 and/or sounds.

25 (14) "Prepaid calling service" means the right to access
26 exclusively telecommunications services, which must be paid for in
27 advance and which enable the origination of calls using an access
28 number or authorization code, whether manually or electronically
29 dialed, and that is sold in predetermined units or dollars of which the
30 number declines with use in a known amount.

31 (15) "Prepaid wireless calling service" means a telecommunications
32 service that provides the right to use mobile wireless service as well
33 as other nontelecommunications services including the download of
34 digital products delivered electronically, content, and ancillary
35 services, which must be paid for in advance and that is sold in
36 predetermined units or dollars of which the number declines with use in
37 a known amount.

1 (16) "Private communications service" means a telecommunications
2 service that entitles the customer to exclusive or priority use of a
3 communications channel or group of channels between or among
4 termination points, regardless of the manner in which the channel or
5 channels are connected, and includes switching capacity, extension
6 lines, stations, and any other associated services that are provided in
7 connection with the use of the channel or channels.

8 (17) "Value-added nonvoice data service" means a service that
9 otherwise meets the definition of telecommunications services in which
10 computer processing applications are used to act on the form, content,
11 code, or protocol of the information or data primarily for a purpose
12 other than transmission, conveyance, or routing.

13 (18) "Charges for mobile telecommunications services" means any
14 charge for, or associated with, the provision of commercial mobile
15 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
16 on June 1, 1999, or any charge for, or associated with, a service
17 provided as an adjunct to a commercial mobile radio service, regardless
18 of whether individual transmissions originate or terminate within the
19 licensed service area of the mobile telecommunications service
20 provider.

21 ~~((6))~~ (19) "Customer" means: (a) The person or entity that
22 contracts with the home service provider for mobile telecommunications
23 services; or (b) the end user of the mobile telecommunications service,
24 if the end user of mobile telecommunications services is not the
25 contracting party, but this subsection ~~((6))~~ (19)(b) applies only for
26 the purpose of determining the place of primary use. The term does not
27 include a reseller of mobile telecommunications service, or a serving
28 carrier under an arrangement to serve the customer outside the home
29 service provider's licensed service area.

30 ~~((7))~~ (20) "Designated data base provider" means a person
31 representing all the political subdivisions of the state that is:

32 (a) Responsible for providing an electronic data base prescribed in
33 4 U.S.C. Sec. 119(a) if the state has not provided an electronic data
34 base; and

35 (b) Approved by municipal and county associations or leagues of the
36 state whose responsibility it would otherwise be to provide a data base
37 prescribed by 4 U.S.C. Secs. 116 through 126.

1 ~~((8))~~ (21) "Enhanced zip code" means a United States postal zip
2 code of nine or more digits.

3 ~~((9))~~ (22) "Home service provider" means the facilities-based
4 carrier or reseller with whom the customer contracts for the provision
5 of mobile telecommunications services.

6 ~~((10))~~ (23) "Licensed service area" means the geographic area in
7 which the home service provider is authorized by law or contract to
8 provide commercial mobile radio service to the customer.

9 ~~((11))~~ (24) "Mobile telecommunications service" means commercial
10 mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in
11 effect on June 1, 1999.

12 ~~((12))~~ (25) "Mobile telecommunications service provider" means a
13 home service provider or a serving carrier.

14 ~~((13))~~ (26) "Place of primary use" means the street address
15 representative of where the customer's use of the mobile
16 telecommunications service primarily occurs, which must be:

17 (a) The residential street address or the primary business street
18 address of the customer; and

19 (b) Within the licensed service area of the home service provider.

20 ~~((14))~~ (27) "Prepaid telephone calling service" means the right
21 to purchase exclusively telecommunications services that must be paid
22 for in advance, that enables the origination of calls using an access
23 number, authorization code, or both, whether manually or electronically
24 dialed, if the remaining amount of units of service that have been
25 prepaid is known by the provider of the prepaid service on a continuous
26 basis.

27 ~~((15))~~ (28) "Reseller" means a provider who purchases
28 telecommunications services from another telecommunications service
29 provider and then resells, uses as a component part of, or integrates
30 the purchased services into a mobile telecommunications service.
31 "Reseller" does not include a serving carrier with whom a home service
32 provider arranges for the services to its customers outside the home
33 service provider's licensed service area.

34 ~~((16))~~ (29) "Serving carrier" means a facilities-based carrier
35 providing mobile telecommunications service to a customer outside a
36 home service provider's or reseller's licensed service area.

37 ~~((17))~~ (30) "Taxing jurisdiction" means any of the several
38 states, the District of Columbia, or any territory or possession of the

1 United States, any municipality, city, county, township, parish,
2 transportation district, or assessment jurisdiction, or other political
3 subdivision within the territorial limits of the United States with the
4 authority to impose a tax, charge, or fee.

5 **Sec. 1003.** RCW 82.04.065 and 1997 c 304 s 5 are each amended to
6 read as follows:

7 (1) "Competitive telephone service" means the providing by any
8 person of telecommunications equipment or apparatus, or service related
9 to that equipment or apparatus such as repair or maintenance service,
10 if the equipment or apparatus is of a type which can be provided by
11 persons that are not subject to regulation as telephone companies under
12 Title 80 RCW and for which a separate charge is made.

13 ~~(2) ("Network telephone service" means the providing by any person
14 of access to a local telephone network, local telephone network
15 switching service, toll service, or coin telephone services, or the
16 providing of telephonic, video, data, or similar communication or
17 transmission for hire, via a local telephone network, toll line or
18 channel, cable, microwave, or similar communication or transmission
19 system. "Network telephone service" includes interstate service,
20 including toll service, originating from or received on
21 telecommunications equipment or apparatus in this state if the charge
22 for the service is billed to a person in this state. "Network
23 telephone service" includes the provision of transmission to and from
24 the site of an internet provider via a local telephone network, toll
25 line or channel, cable, microwave, or similar communication or
26 transmission system. "Network telephone service" does not include the
27 providing of competitive telephone service, the providing of cable
28 television service, the providing of broadcast services by radio or
29 television stations, nor the provision of internet service as defined
30 in RCW 82.04.297, including the reception of dial in connection,
31 provided at the site of the internet service provider.~~

32 ~~(3) "Telephone service" means competitive telephone service or
33 network telephone service, or both, as defined in subsections (1) and
34 (2) of this section.~~

35 ~~(4) "Telephone business" means the business of providing network
36 telephone service, as defined in subsection (2) of this section. It
37 includes cooperative or farmer line telephone companies or associations~~

1 ~~operating an exchange~~) "Ancillary services" means services that are
2 associated with or incidental to the provision of "telecommunications
3 services," including but not limited to "detailed telecommunications
4 billing," "directory assistance," "vertical service," and "voice mail
5 services."

6 (3) "Conference-bridging service" means an ancillary service that
7 links two or more participants of an audio or video conference call and
8 may include the provision of a telephone number. "Conference-bridging
9 service" does not include the telecommunications services used to reach
10 the conference bridge.

11 (4) "Detailed telecommunications billing service" means an
12 ancillary service of separately stating information pertaining to
13 individual calls on a customer's billing statement.

14 (5) "Directory assistance" means an ancillary service of providing
15 telephone number information, and/or address information.

16 (6) "Vertical service" means an ancillary service that is offered
17 in connection with one or more telecommunications services, that offers
18 advanced calling features that allow customers to identify callers and
19 to manage multiple calls and call connections, including conference-
20 bridging services.

21 (7) "Voice mail service" means an ancillary service that enables
22 the customer to store, send, or receive recorded messages. "Voice mail
23 service" does not include any vertical services that the customer may
24 be required to have in order to use the voice mail service.

25 (8) "Telecommunications service" means the electronic transmission,
26 conveyance, or routing of voice, data, audio, video, or any other
27 information or signals to a point, or between or among points.
28 "Telecommunications service" includes such transmission, conveyance, or
29 routing in which computer processing applications are used to act on
30 the form, code, or protocol of the content for purposes of
31 transmission, conveyance, or routing without regard to whether such
32 service is referred to as voice over internet protocol services or is
33 classified by the federal communications commission as enhanced or
34 value added. "Telecommunications service" does not include:

35 (a) Data processing and information services that allow data to be
36 generated, acquired, stored, processed, or retrieved and delivered by
37 an electronic transmission to a purchaser where such purchaser's

1 primary purpose for the underlying transaction is the processed data or
2 information;

3 (b) Installation or maintenance of wiring or equipment on a
4 customer's premises;

5 (c) Tangible personal property;

6 (d) Advertising, including but not limited to directory
7 advertising;

8 (e) Billing and collection services provided to third parties;

9 (f) Internet access service;

10 (g) Radio and television audio and video programming services,
11 regardless of the medium, including the furnishing of transmission,
12 conveyance, and routing of such services by the programming service
13 provider. Radio and television audio and video programming services
14 include but are not limited to cable service as defined in 47 U.S.C.
15 Sec. 522(6) and audio and video programming services delivered by
16 commercial mobile radio service providers, as defined in section 20.3,
17 Title 47 C.F.R.;

18 (h) Ancillary services; or

19 (i) Digital products delivered electronically, including but not
20 limited to software, music, video, reading materials, or ring tones.

21 (9) "800 service" means a telecommunications service that allows a
22 caller to dial a toll-free number without incurring a charge for the
23 call. The service is typically marketed under the name "800," "855,"
24 "866," "877," and "888" toll-free calling, and any subsequent numbers
25 designated by the federal communications commission.

26 (10) "900 service" means an inbound toll "telecommunications
27 service" purchased by a subscriber that allows the subscriber's
28 customers to call in to the subscriber's prerecorded announcement or
29 live service. "900 service" does not include the charge for:
30 Collection services provided by the seller of the telecommunications
31 services to the subscriber, or services or products sold by the
32 subscriber to the subscriber's customer. The service is typically
33 marketed under the name "900" service, and any subsequent numbers
34 designated by the federal communications commission.

35 (11) "Fixed wireless service" means a telecommunications service
36 that provides radio communication between fixed points.

37 (12) "Mobile wireless service" means a telecommunications service
38 that is transmitted, conveyed, or routed regardless of the technology

1 used, whereby the origination and/or termination points of the
2 transmission, conveyance, or routing are not fixed, including, by way
3 of example only, telecommunications services that are provided by a
4 commercial mobile radio service provider.

5 (13) "Paging service" means a telecommunications service that
6 provides transmission of coded radio signals for the purpose of
7 activating specific pagers; these transmissions may include messages
8 and/or sounds.

9 (14) "Prepaid calling service" means the right to access
10 exclusively telecommunications services, which must be paid for in
11 advance and which enable the origination of calls using an access
12 number or authorization code, whether manually or electronically
13 dialed, and that is sold in predetermined units or dollars of which the
14 number declines with use in a known amount.

15 (15) "Prepaid wireless calling service" means a telecommunications
16 service that provides the right to use mobile wireless service as well
17 as other nontelecommunications services including the download of
18 digital products delivered electronically, content, and ancillary
19 services, which must be paid for in advance and that is sold in
20 predetermined units or dollars of which the number declines with use in
21 a known amount.

22 (16) "Private communications service" means a telecommunications
23 service that entitles the customer to exclusive or priority use of a
24 communications channel or group of channels between or among
25 termination points, regardless of the manner in which the channel or
26 channels are connected, and includes switching capacity, extension
27 lines, stations, and any other associated services that are provided in
28 connection with the use of the channel or channels.

29 (17) "Value-added nonvoice data service" means a service that
30 otherwise meets the definition of telecommunications services in which
31 computer processing applications are used to act on the form, content,
32 code, or protocol of the information or data primarily for a purpose
33 other than transmission, conveyance, or routing.

34 **Sec. 1004.** RCW 82.04.050 and 2005 c 515 s 2 and 2005 c 514 s 101
35 are each reenacted and amended to read as follows:

36 (1) "Sale at retail" or "retail sale" means every sale of tangible
37 personal property (including articles produced, fabricated, or

1 imprinted) to all persons irrespective of the nature of their business
2 and including, among others, without limiting the scope hereof, persons
3 who install, repair, clean, alter, improve, construct, or decorate real
4 or personal property of or for consumers other than a sale to a person
5 who presents a resale certificate under RCW 82.04.470 and who:

6 (a) Purchases for the purpose of resale as tangible personal
7 property in the regular course of business without intervening use by
8 such person, but a purchase for the purpose of resale by a regional
9 transit authority under RCW 81.112.300 is not a sale for resale; or

10 (b) Installs, repairs, cleans, alters, imprints, improves,
11 constructs, or decorates real or personal property of or for consumers,
12 if such tangible personal property becomes an ingredient or component
13 of such real or personal property without intervening use by such
14 person; or

15 (c) Purchases for the purpose of consuming the property purchased
16 in producing for sale a new article of tangible personal property or
17 substance, of which such property becomes an ingredient or component or
18 is a chemical used in processing, when the primary purpose of such
19 chemical is to create a chemical reaction directly through contact with
20 an ingredient of a new article being produced for sale; or

21 (d) Purchases for the purpose of consuming the property purchased
22 in producing ferrosilicon which is subsequently used in producing
23 magnesium for sale, if the primary purpose of such property is to
24 create a chemical reaction directly through contact with an ingredient
25 of ferrosilicon; (~~(fer)~~) or

26 (e) Purchases for the purpose of providing the property to
27 consumers as part of competitive telephone service, as defined in RCW
28 82.04.065. The term shall include every sale of tangible personal
29 property which is used or consumed or to be used or consumed in the
30 performance of any activity classified as a "sale at retail" or "retail
31 sale" even though such property is resold or utilized as provided in
32 (a), (b), (c), (d), or (e) of this subsection following such use. The
33 term also means every sale of tangible personal property to persons
34 engaged in any business which is taxable under RCW 82.04.280 (2) and
35 (7), 82.04.290, and 82.04.2908; or

36 (f) Purchases for the purpose of satisfying the person's
37 obligations under an extended warranty as defined in subsection (7) of

1 this section, if such tangible personal property replaces or becomes an
2 ingredient or component of property covered by the extended warranty
3 without intervening use by such person.

4 (2) The term "sale at retail" or "retail sale" shall include the
5 sale of or charge made for tangible personal property consumed and/or
6 for labor and services rendered in respect to the following:

7 (a) The installing, repairing, cleaning, altering, imprinting, or
8 improving of tangible personal property of or for consumers, including
9 charges made for the mere use of facilities in respect thereto, but
10 excluding charges made for the use of self-service laundry facilities,
11 and also excluding sales of laundry service to nonprofit health care
12 facilities, and excluding services rendered in respect to live animals,
13 birds and insects;

14 (b) The constructing, repairing, decorating, or improving of new or
15 existing buildings or other structures under, upon, or above real
16 property of or for consumers, including the installing or attaching of
17 any article of tangible personal property therein or thereto, whether
18 or not such personal property becomes a part of the realty by virtue of
19 installation, and shall also include the sale of services or charges
20 made for the clearing of land and the moving of earth excepting the
21 mere leveling of land used in commercial farming or agriculture;

22 (c) The charge for labor and services rendered in respect to
23 constructing, repairing, or improving any structure upon, above, or
24 under any real property owned by an owner who conveys the property by
25 title, possession, or any other means to the person performing such
26 construction, repair, or improvement for the purpose of performing such
27 construction, repair, or improvement and the property is then
28 reconveyed by title, possession, or any other means to the original
29 owner;

30 (d) The sale of or charge made for labor and services rendered in
31 respect to the cleaning, fumigating, razing or moving of existing
32 buildings or structures, but shall not include the charge made for
33 janitorial services; and for purposes of this section the term
34 "janitorial services" shall mean those cleaning and caretaking services
35 ordinarily performed by commercial janitor service businesses
36 including, but not limited to, wall and window washing, floor cleaning
37 and waxing, and the cleaning in place of rugs, drapes and upholstery.

1 The term "janitorial services" does not include painting, papering,
2 repairing, furnace or septic tank cleaning, snow removal or
3 sandblasting;

4 (e) The sale of or charge made for labor and services rendered in
5 respect to automobile towing and similar automotive transportation
6 services, but not in respect to those required to report and pay taxes
7 under chapter 82.16 RCW;

8 (f) The sale of and charge made for the furnishing of lodging and
9 all other services by a hotel, rooming house, tourist court, motel,
10 trailer camp, and the granting of any similar license to use real
11 property, as distinguished from the renting or leasing of real
12 property, and it shall be presumed that the occupancy of real property
13 for a continuous period of one month or more constitutes a rental or
14 lease of real property and not a mere license to use or enjoy the same.
15 For the purposes of this subsection, it shall be presumed that the sale
16 of and charge made for the furnishing of lodging for a continuous
17 period of one month or more to a person is a rental or lease of real
18 property and not a mere license to enjoy the same;

19 (g) The sale of or charge made for tangible personal property,
20 labor and services to persons taxable under (a), (b), (c), (d), (e),
21 and (f) of this subsection when such sales or charges are for property,
22 labor and services which are used or consumed in whole or in part by
23 such persons in the performance of any activity defined as a "sale at
24 retail" or "retail sale" even though such property, labor and services
25 may be resold after such use or consumption. Nothing contained in this
26 subsection shall be construed to modify subsection (1) of this section
27 and nothing contained in subsection (1) of this section shall be
28 construed to modify this subsection.

29 (3) The term "sale at retail" or "retail sale" shall include the
30 sale of or charge made for personal, business, or professional services
31 including amounts designated as interest, rents, fees, admission, and
32 other service emoluments however designated, received by persons
33 engaging in the following business activities:

34 (a) Amusement and recreation services including but not limited to
35 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
36 for sightseeing purposes, and others, when provided to consumers;

37 (b) Abstract, title insurance, and escrow services;

38 (c) Credit bureau services;

1 (d) Automobile parking and storage garage services;

2 (e) Landscape maintenance and horticultural services but excluding
3 (i) horticultural services provided to farmers and (ii) pruning,
4 trimming, repairing, removing, and clearing of trees and brush near
5 electric transmission or distribution lines or equipment, if performed
6 by or at the direction of an electric utility;

7 (f) Service charges associated with tickets to professional
8 sporting events; and

9 (g) The following personal services: Physical fitness services,
10 tanning salon services, tattoo parlor services, steam bath services,
11 turkish bath services, escort services, and dating services.

12 (4)(a) The term shall also include:

13 (i) The renting or leasing of tangible personal property to
14 consumers; and

15 (ii) Providing tangible personal property along with an operator
16 for a fixed or indeterminate period of time. A consideration of this
17 is that the operator is necessary for the tangible personal property to
18 perform as designed. For the purpose of this subsection (4)(a)(ii), an
19 operator must do more than maintain, inspect, or set up the tangible
20 personal property.

21 (b) The term shall not include the renting or leasing of tangible
22 personal property where the lease or rental is for the purpose of
23 sublease or subrent.

24 (5) The term shall also include the providing of "competitive
25 telephone service," "telecommunications service," or "ancillary
26 services," as those terms are defined in RCW 82.04.065, to consumers.

27 (6) The term shall also include the sale of prewritten computer
28 software other than a sale to a person who presents a resale
29 certificate under RCW 82.04.470, regardless of the method of delivery
30 to the end user, but shall not include custom software or the
31 customization of prewritten computer software.

32 (7) The term shall also include the sale of or charge made for an
33 extended warranty to a consumer. For purposes of this subsection,
34 "extended warranty" means an agreement for a specified duration to
35 perform the replacement or repair of tangible personal property at no
36 additional charge or a reduced charge for tangible personal property,
37 labor, or both, or to provide indemnification for the replacement or
38 repair of tangible personal property, based on the occurrence of

1 specified events. The term "extended warranty" does not include an
2 agreement, otherwise meeting the definition of extended warranty in
3 this subsection, if no separate charge is made for the agreement and
4 the value of the agreement is included in the sales price of the
5 tangible personal property covered by the agreement. For purposes of
6 this subsection, "sales price" has the same meaning as in RCW
7 82.08.010.

8 (8) The term shall not include the sale of or charge made for labor
9 and services rendered in respect to the building, repairing, or
10 improving of any street, place, road, highway, easement, right of way,
11 mass public transportation terminal or parking facility, bridge,
12 tunnel, or trestle which is owned by a municipal corporation or
13 political subdivision of the state or by the United States and which is
14 used or to be used primarily for foot or vehicular traffic including
15 mass transportation vehicles of any kind.

16 (9) The term shall also not include sales of chemical sprays or
17 washes to persons for the purpose of postharvest treatment of fruit for
18 the prevention of scald, fungus, mold, or decay, nor shall it include
19 sales of feed, seed, seedlings, fertilizer, agents for enhanced
20 pollination including insects such as bees, and spray materials to:
21 (a) Persons who participate in the federal conservation reserve
22 program, the environmental quality incentives program, the wetlands
23 reserve program, and the wildlife habitat incentives program, or their
24 successors administered by the United States department of agriculture;
25 (b) farmers for the purpose of producing for sale any agricultural
26 product; and (c) farmers acting under cooperative habitat development
27 or access contracts with an organization exempt from federal income tax
28 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
29 fish and wildlife to produce or improve wildlife habitat on land that
30 the farmer owns or leases.

31 (10) The term shall not include the sale of or charge made for
32 labor and services rendered in respect to the constructing, repairing,
33 decorating, or improving of new or existing buildings or other
34 structures under, upon, or above real property of or for the United
35 States, any instrumentality thereof, or a county or city housing
36 authority created pursuant to chapter 35.82 RCW, including the
37 installing, or attaching of any article of tangible personal property
38 therein or thereto, whether or not such personal property becomes a

1 part of the realty by virtue of installation. Nor shall the term
2 include the sale of services or charges made for the clearing of land
3 and the moving of earth of or for the United States, any
4 instrumentality thereof, or a county or city housing authority. Nor
5 shall the term include the sale of services or charges made for
6 cleaning up for the United States, or its instrumentalities,
7 radioactive waste and other byproducts of weapons production and
8 nuclear research and development.

9 (11) The term shall not include the sale of or charge made for
10 labor, services, or tangible personal property pursuant to agreements
11 providing maintenance services for bus, rail, or rail fixed guideway
12 equipment when a regional transit authority is the recipient of the
13 labor, services, or tangible personal property, and a transit agency,
14 as defined in RCW 81.104.015, performs the labor or services.

15 **Sec. 1005.** RCW 82.08.0289 and 2002 c 67 s 6 are each amended to
16 read as follows:

17 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

18 (a) (~~Network telephone service, other than toll service, to~~
19 ~~residential customers;~~

20 ~~(b) Network telephone service which is paid for by inserting coins~~
21 ~~in coin-operated telephones)) Local service;~~

22 (b) Coin-operated telephone service; and

23 (c) Mobile telecommunications services, including any toll service,
24 provided to a customer whose place of primary use is outside this
25 state.

26 (2) The definitions in RCW 82.04.065, as well as the definitions in
27 this subsection, apply to this section.

28 (a) (~~"Residential customer" means an individual subscribing to a~~
29 ~~residential class of telephone service)) "Local service" means
30 ancillary services and telecommunications service, other than toll
31 service, provided to an individual subscribing to a residential class
32 of telephone service.~~

33 (b) "Toll service" does not include customer access line charges
34 for access to a toll calling network.

35 (c) "Coin-operated telephone service" means a telecommunications
36 service paid for by inserting money into a telephone accepting direct
37 deposits of money to operate.

1 **Sec. 1006.** RCW 82.08.0289 and 1983 2nd ex.s. c 3 s 30 are each
2 amended to read as follows:

3 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

4 (a) ~~((Network telephone service, other than toll service, to~~
5 ~~residential customers.~~

6 ~~(b) Network telephone service which is paid for by inserting coins~~
7 ~~in coin-operated telephones))~~ Local service; and

8 (b) Coin-operated telephone service.

9 (2) As used in this section:

10 (a) ~~((“Network telephone service” has the meaning given in RCW~~
11 ~~82.04.065.~~

12 ~~(b) “Residential customer” means an individual subscribing to a~~
13 ~~residential class of telephone service))~~ “Local service” means
14 ancillary services and telecommunications service, as those terms are
15 defined in RCW 82.04.065, other than toll service, provided to an
16 individual subscribing to a residential class of telephone service.

17 ~~((c))~~ (b) “Toll service” does not include customer access line
18 charges for access to a toll calling network.

19 (c) “Coin-operated telephone service” means a telecommunications
20 service paid for by inserting money into a telephone accepting direct
21 deposits of money to operate.

22 **Sec. 1007.** RCW 82.04.060 and 2005 c 514 s 102 are each amended to
23 read as follows:

24 “Sale at wholesale” or “wholesale sale” means: (1) Any sale of
25 tangible personal property, any sale of services defined as a retail
26 sale in RCW 82.04.050(2)(a), any sale of amusement or recreation
27 services as defined in RCW 82.04.050(3)(a), any sale of canned
28 software, any sale of an extended warranty as defined in RCW
29 82.04.050(7), or any sale of ~~((telephone))~~ ancillary services or
30 telecommunications service as those terms are defined in RCW 82.04.065,
31 which is not a sale at retail; and (2) any charge made for labor and
32 services rendered for persons who are not consumers, in respect to real
33 or personal property, if such charge is expressly defined as a retail
34 sale by RCW 82.04.050 when rendered to or for consumers: PROVIDED,
35 That the term “real or personal property” as used in this subsection
36 shall not include any natural products named in RCW 82.04.100.

1 **Sec. 1008.** RCW 82.04.190 and 2005 c 514 s 103 are each amended to
2 read as follows:

3 "Consumer" means the following:

4 (1) Any person who purchases, acquires, owns, holds, or uses any
5 article of tangible personal property irrespective of the nature of the
6 person's business and including, among others, without limiting the
7 scope hereof, persons who install, repair, clean, alter, improve,
8 construct, or decorate real or personal property of or for consumers
9 other than for the purpose (a) of resale as tangible personal property
10 in the regular course of business or (b) of incorporating such property
11 as an ingredient or component of real or personal property when
12 installing, repairing, cleaning, altering, imprinting, improving,
13 constructing, or decorating such real or personal property of or for
14 consumers or (c) of consuming such property in producing for sale a new
15 article of tangible personal property or a new substance, of which such
16 property becomes an ingredient or component or as a chemical used in
17 processing, when the primary purpose of such chemical is to create a
18 chemical reaction directly through contact with an ingredient of a new
19 article being produced for sale or (d) of consuming the property
20 purchased in producing ferrosilicon which is subsequently used in
21 producing magnesium for sale, if the primary purpose of such property
22 is to create a chemical reaction directly through contact with an
23 ingredient of ferrosilicon or (e) of satisfying the person's
24 obligations under an extended warranty as defined in RCW 82.04.050(7),
25 if such tangible personal property replaces or becomes an ingredient or
26 component of property covered by the extended warranty without
27 intervening use by such person;

28 (2)(a) Any person engaged in any business activity taxable under
29 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
30 uses any (~~telephone~~) ancillary services or telecommunications service
31 as those terms are defined in RCW 82.04.065, other than for resale in
32 the regular course of business; (c) any person who purchases, acquires,
33 or uses any service defined in RCW 82.04.050(2)(a), other than for
34 resale in the regular course of business or for the purpose of
35 satisfying the person's obligations under an extended warranty as
36 defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or
37 uses any amusement and recreation service defined in RCW
38 82.04.050(3)(a), other than for resale in the regular course of

1 business; (e) any person who is an end user of software; and (f) any
2 person who purchases or acquires an extended warranty as defined in RCW
3 82.04.050(7) other than for resale in the regular course of business;

4 (3) Any person engaged in the business of contracting for the
5 building, repairing or improving of any street, place, road, highway,
6 easement, right of way, mass public transportation terminal or parking
7 facility, bridge, tunnel, or trestle which is owned by a municipal
8 corporation or political subdivision of the state of Washington or by
9 the United States and which is used or to be used primarily for foot or
10 vehicular traffic including mass transportation vehicles of any kind as
11 defined in RCW 82.04.280, in respect to tangible personal property when
12 such person incorporates such property as an ingredient or component of
13 such publicly owned street, place, road, highway, easement, right of
14 way, mass public transportation terminal or parking facility, bridge,
15 tunnel, or trestle by installing, placing or spreading the property in
16 or upon the right of way of such street, place, road, highway,
17 easement, bridge, tunnel, or trestle or in or upon the site of such
18 mass public transportation terminal or parking facility;

19 (4) Any person who is an owner, lessee or has the right of
20 possession to or an easement in real property which is being
21 constructed, repaired, decorated, improved, or otherwise altered by a
22 person engaged in business, excluding only (a) municipal corporations
23 or political subdivisions of the state in respect to labor and services
24 rendered to their real property which is used or held for public road
25 purposes, and (b) the United States, instrumentalities thereof, and
26 county and city housing authorities created pursuant to chapter 35.82
27 RCW in respect to labor and services rendered to their real property.
28 Nothing contained in this or any other subsection of this definition
29 shall be construed to modify any other definition of "consumer";

30 (5) Any person who is an owner, lessee, or has the right of
31 possession to personal property which is being constructed, repaired,
32 improved, cleaned, imprinted, or otherwise altered by a person engaged
33 in business;

34 (6) Any person engaged in the business of constructing, repairing,
35 decorating, or improving new or existing buildings or other structures
36 under, upon, or above real property of or for the United States, any
37 instrumentality thereof, or a county or city housing authority created
38 pursuant to chapter 35.82 RCW, including the installing or attaching of

1 any article of tangible personal property therein or thereto, whether
2 or not such personal property becomes a part of the realty by virtue of
3 installation; also, any person engaged in the business of clearing land
4 and moving earth of or for the United States, any instrumentality
5 thereof, or a county or city housing authority created pursuant to
6 chapter 35.82 RCW. Any such person shall be a consumer within the
7 meaning of this subsection in respect to tangible personal property
8 incorporated into, installed in, or attached to such building or other
9 structure by such person, except that consumer does not include any
10 person engaged in the business of constructing, repairing, decorating,
11 or improving new or existing buildings or other structures under, upon,
12 or above real property of or for the United States, or any
13 instrumentality thereof, if the investment project would qualify for
14 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
15 private entity;

16 (7) Any person who is a lessor of machinery and equipment, the
17 rental of which is exempt from the tax imposed by RCW 82.08.020 under
18 RCW 82.08.02565, with respect to the sale of or charge made for
19 tangible personal property consumed in respect to repairing the
20 machinery and equipment, if the tangible personal property has a useful
21 life of less than one year. Nothing contained in this or any other
22 subsection of this section shall be construed to modify any other
23 definition of "consumer";

24 (8) Any person engaged in the business of cleaning up for the
25 United States, or its instrumentalities, radioactive waste and other
26 byproducts of weapons production and nuclear research and development;
27 and

28 (9) Any person who is an owner, lessee, or has the right of
29 possession of tangible personal property that, under the terms of an
30 extended warranty as defined in RCW 82.04.050(7), has been repaired or
31 is replacement property, but only with respect to the sale of or charge
32 made for the repairing of the tangible personal property or the
33 replacement property.

34 **Sec. 1009.** RCW 82.14B.020 and 2002 c 341 s 7 are each amended to
35 read as follows:

36 As used in this chapter:

1 (1) "Emergency services communication system" means a multicounty,
2 countywide, or districtwide radio or landline communications network,
3 including an enhanced 911 telephone system, which provides rapid public
4 access for coordinated dispatching of services, personnel, equipment,
5 and facilities for police, fire, medical, or other emergency services.

6 (2) "Enhanced 911 telephone system" means a public telephone system
7 consisting of a network, data base, and on-premises equipment that is
8 accessed by dialing 911 and that enables reporting police, fire,
9 medical, or other emergency situations to a public safety answering
10 point. The system includes the capability to selectively route
11 incoming 911 calls to the appropriate public safety answering point
12 that operates in a defined 911 service area and the capability to
13 automatically display the name, address, and telephone number of
14 incoming 911 calls at the appropriate public safety answering point.

15 (3) "Switched access line" means the telephone service line which
16 connects a subscriber's main telephone(s) or equivalent main
17 telephone(s) to the local exchange company's switching office.

18 (4) "Local exchange company" has the meaning ascribed to it in RCW
19 80.04.010.

20 (5) "Radio access line" means the telephone number assigned to or
21 used by a subscriber for two-way local wireless voice service available
22 to the public for hire from a radio communications service company.
23 Radio access lines include, but are not limited to, radio-telephone
24 communications lines used in cellular telephone service, personal
25 communications services, and network radio access lines, or their
26 functional and competitive equivalent. Radio access lines do not
27 include lines that provide access to one-way signaling service, such as
28 paging service, or to communications channels suitable only for data
29 transmission, or to nonlocal radio access line service, such as
30 wireless roaming service, or to a private telecommunications system.

31 (6) "Radio communications service company" has the meaning ascribed
32 to it in RCW 80.04.010, except that it does not include radio paging
33 providers. It does include those persons or entities that provide
34 commercial mobile radio services, as defined by 47 U.S.C. Sec.
35 332(d)(1), and both facilities-based and nonfacilities-based resellers.

36 (7) "Private telecommunications system" has the meaning ascribed to
37 it in RCW 80.04.010.

1 (8) "Subscriber" means the retail purchaser of telephone service as
2 telephone service is defined in RCW (~~(82.04.065(3))~~) 82.16.010.

3 (9) "Place of primary use" has the meaning ascribed to it in (~~the~~
4 ~~federal mobile telecommunications sourcing act, P.L. 106-252~~) RCW
5 82.04.065.

6 **Sec. 1010.** RCW 82.72.010 and 2004 c 254 s 3 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Switched access line" has the meaning provided in RCW
11 82.14B.020.

12 (2) "Local exchange company" has the meaning provided in RCW
13 80.04.010.

14 (3) "Subscriber" means the retail purchaser of telephone service as
15 telephone service is defined in RCW (~~(82.04.065(3))~~) 82.16.010.

16 (4) "Telephone program excise taxes" means the taxes on switched
17 access lines imposed by RCW 43.20A.725 and 80.36.430.

18 **Sec. 1011.** RCW 82.32.555 and 2004 c 76 s 1 are each amended to
19 read as follows:

20 If a taxing jurisdiction does not subject some charges for
21 (~~telephone~~) ancillary services or telecommunications service, as
22 those terms are defined in RCW 82.04.065, to taxation, but these
23 charges are aggregated with and not separately stated from charges that
24 are subject to taxation, then the charges for nontaxable (~~telephone~~)
25 ancillary services or telecommunications service, as those terms are
26 defined in RCW 82.04.065, may be subject to taxation unless the
27 (~~telephone~~) telecommunications service (~~or~~) provider or ancillary
28 services provider can reasonably identify charges not subject to the
29 tax, charge, or fee from its books and records that are kept in the
30 regular course of business and for purposes other than merely
31 allocating the sales price of an aggregated charge to the individually
32 aggregated items.

33 **Sec. 1012.** RCW 35A.82.055 and 2002 c 179 s 4 are each amended to
34 read as follows:

35 Any code city which imposes a license fee or tax upon the business

1 activity of engaging in the telephone business, as defined in RCW
2 ((82.04.065)) 82.16.010, which is measured by gross receipts or gross
3 income from the business shall impose the tax at a uniform rate on all
4 persons engaged in the telephone business in the code city.

5 This section does not apply to the providing of competitive
6 telephone service as defined in RCW 82.04.065 or to the providing of
7 payphone service as defined in RCW 35.21.710.

8 **Sec. 1013.** RCW 35A.82.060 and 2002 c 67 s 10 are each amended to
9 read as follows:

10 (1) Any code city which imposes a license fee or tax upon the
11 business activity of engaging in the telephone business which is
12 measured by gross receipts or gross income may impose the fee or tax,
13 if it desires, on one hundred percent of the total gross revenue
14 derived from intrastate toll telephone services subject to the fee or
15 tax: PROVIDED, That the city shall not impose the fee or tax on that
16 portion of network telephone service which represents charges to
17 another telecommunications company, as defined in RCW 80.04.010, for
18 connecting fees, switching charges, or carrier access charges relating
19 to intrastate toll telephone services, or for access to, or charges
20 for, interstate services, or charges for network telephone service that
21 is purchased for the purpose of resale, or charges for mobile
22 telecommunications services provided to customers whose place of
23 primary use is not within the city.

24 (2) Any city that imposes a license tax or fee under subsection (1)
25 of this section has the authority, rights, and obligations of a taxing
26 jurisdiction as provided in RCW 82.32.490 through 82.32.510.

27 (3) The definitions in RCW 82.04.065 and 82.16.010 apply to this
28 section.

29 **Sec. 1014.** RCW 35A.82.060 and 1989 c 103 s 3 are each amended to
30 read as follows:

31 Any code city which imposes a license fee or tax upon the business
32 activity of engaging in the telephone business, as defined in RCW
33 ((82.04.065)) 82.16.010, which is measured by gross receipts or gross
34 income may impose the fee or tax, if it desires, on one hundred percent
35 of the total gross revenue derived from intrastate toll telephone
36 services subject to the fee or tax: PROVIDED, That the city shall not

1 impose the fee or tax on that portion of network telephone service, as
2 defined in RCW ((82.04.065)) 82.16.010, which represents charges to
3 another telecommunications company, as defined in RCW 80.04.010, for
4 connecting fees, switching charges, or carrier access charges relating
5 to intrastate toll telephone services, or for access to, or charges
6 for, interstate services, or charges for network telephone service that
7 is purchased for the purpose of resale.

8 **Sec. 1015.** RCW 35A.82.065 and 1989 c 103 s 4 are each amended to
9 read as follows:

10 Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which
11 imposes a tax upon business activities measured by gross receipts or
12 gross income from sales, may impose such tax on that portion of network
13 telephone service, as defined in RCW ((82.04.065)) 82.16.010, which
14 represents charges to another telecommunications company, as defined in
15 RCW 80.04.010, for connecting fees, switching charges, or carrier
16 access charges relating to intrastate toll services, or charges for
17 network telephone service that is purchased for the purpose of resale.
18 Such tax shall be levied at the same rate as is applicable to other
19 competitive telephone service as defined in RCW 82.04.065.

20 **Sec. 1016.** RCW 35.21.712 and 2002 c 179 s 2 are each amended to
21 read as follows:

22 Any city which imposes a license fee or tax upon the business
23 activity of engaging in the telephone business, as defined in RCW
24 ((82.04.065)) 82.16.010, which is measured by gross receipts or gross
25 income from the business shall impose the tax at a uniform rate on all
26 persons engaged in the telephone business in the city.

27 This section does not apply to the providing of competitive
28 telephone service as defined in RCW 82.04.065 or to the providing of
29 payphone service as defined in RCW 35.21.710.

30 **Sec. 1017.** RCW 35.21.714 and 2002 c 67 s 9 are each amended to
31 read as follows:

32 (1) Any city which imposes a license fee or tax upon the business
33 activity of engaging in the telephone business which is measured by
34 gross receipts or gross income may impose the fee or tax, if it
35 desires, on one hundred percent of the total gross revenue derived from

1 intrastate toll telephone services subject to the fee or tax:
2 PROVIDED, That the city shall not impose the fee or tax on that portion
3 of network telephone service which represents charges to another
4 telecommunications company, as defined in RCW 80.04.010, for connecting
5 fees, switching charges, or carrier access charges relating to
6 intrastate toll telephone services, or for access to, or charges for,
7 interstate services, or charges for network telephone service that is
8 purchased for the purpose of resale, or charges for mobile
9 telecommunications services provided to customers whose place of
10 primary use is not within the city.

11 (2) Any city that imposes a license tax or fee under subsection (1)
12 of this section has the authority, rights, and obligations of a taxing
13 jurisdiction as provided in RCW 82.32.490 through 82.32.510.

14 (3) The definitions in RCW 82.04.065 and 82.16.010 apply to this
15 section.

16 **Sec. 1018.** RCW 35.21.714 and 1989 c 103 s 1 are each amended to
17 read as follows:

18 Any city which imposes a license fee or tax upon the business
19 activity of engaging in the telephone business, as defined in RCW
20 ((~~82.04.065~~)) 82.16.010, which is measured by gross receipts or gross
21 income may impose the fee or tax, if it desires, on one hundred percent
22 of the total gross revenue derived from intrastate toll telephone
23 services subject to the fee or tax: PROVIDED, That the city shall not
24 impose the fee or tax on that portion of network telephone service, as
25 defined in RCW ((~~82.04.065~~)) 82.16.010, which represents charges to
26 another telecommunications company, as defined in RCW 80.04.010, for
27 connecting fees, switching charges, or carrier access charges relating
28 to intrastate toll telephone services, or for access to, or charges
29 for, interstate services, or charges for network telephone service that
30 is purchased for the purpose of resale.

31 **Sec. 1019.** RCW 35.21.715 and 1989 c 103 s 2 are each amended to
32 read as follows:

33 Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which
34 imposes a tax upon business activities measured by gross receipts or
35 gross income from sales, may impose such tax on that portion of network
36 telephone service, as defined in RCW ((~~82.04.065~~)) 82.16.010, which

1 represents charges to another telecommunications company, as defined in
2 RCW 80.04.010, for connecting fees, switching charges, or carrier
3 access charges relating to intrastate toll services, or charges for
4 network telephone service that is purchased for the purpose of resale.
5 Such tax shall be levied at the same rate as is applicable to other
6 competitive telephone service as defined in RCW 82.04.065.

7 **Sec. 1020.** RCW 35.21.860 and 2000 c 83 s 8 are each amended to
8 read as follows:

9 (1) No city or town may impose a franchise fee or any other fee or
10 charge of whatever nature or description upon the light and power, or
11 gas distribution businesses, as defined in RCW 82.16.010, or telephone
12 business, as defined in RCW (~~82.04.065~~) 82.16.010, or service
13 provider for use of the right of way, except:

14 (a) A tax authorized by RCW 35.21.865 may be imposed;

15 (b) A fee may be charged to such businesses or service providers
16 that recovers actual administrative expenses incurred by a city or town
17 that are directly related to receiving and approving a permit, license,
18 and franchise, to inspecting plans and construction, or to the
19 preparation of a detailed statement pursuant to chapter 43.21C RCW;

20 (c) Taxes permitted by state law on service providers;

21 (d) Franchise requirements and fees for cable television services
22 as allowed by federal law; and

23 (e) A site-specific charge pursuant to an agreement between the
24 city or town and a service provider of personal wireless services
25 acceptable to the parties for:

26 (i) The placement of new structures in the right of way regardless
27 of height, unless the new structure is the result of a mandated
28 relocation in which case no charge will be imposed if the previous
29 location was not charged;

30 (ii) The placement of replacement structures when the replacement
31 is necessary for the installation or attachment of wireless facilities,
32 and the overall height of the replacement structure and the wireless
33 facility is more than sixty feet; or

34 (iii) The placement of personal wireless facilities on structures
35 owned by the city or town located in the right of way. However, a
36 site-specific charge shall not apply to the placement of personal

1 wireless facilities on existing structures, unless the structure is
2 owned by the city or town.

3 A city or town is not required to approve the use permit for the
4 placement of a facility for personal wireless services that meets one
5 of the criteria in this subsection absent such an agreement. If the
6 parties are unable to agree on the amount of the charge, the service
7 provider may submit the amount of the charge to binding arbitration by
8 serving notice on the city or town. Within thirty days of receipt of
9 the initial notice, each party shall furnish a list of acceptable
10 arbitrators. The parties shall select an arbitrator; failing to agree
11 on an arbitrator, each party shall select one arbitrator and the two
12 arbitrators shall select a third arbitrator for an arbitration panel.
13 The arbitrator or arbitrators shall determine the charge based on
14 comparable siting agreements involving public land and rights of way.
15 The arbitrator or arbitrators shall not decide any other disputed
16 issues, including but not limited to size, location, and zoning
17 requirements. Costs of the arbitration, including compensation for the
18 arbitrator's services, must be borne equally by the parties
19 participating in the arbitration and each party shall bear its own
20 costs and expenses, including legal fees and witness expenses, in
21 connection with the arbitration proceeding.

22 (2) Subsection (1) of this section does not prohibit franchise fees
23 imposed on an electrical energy, natural gas, or telephone business, by
24 contract existing on April 20, 1982, with a city or town, for the
25 duration of the contract, but the franchise fees shall be considered
26 taxes for the purposes of the limitations established in RCW 35.21.865
27 and 35.21.870 to the extent the fees exceed the costs allowable under
28 subsection (1) of this section.

29 **Sec. 1021.** RCW 35.102.020 and 2003 c 79 s 2 are each amended to
30 read as follows:

31 Chapter 79, Laws of 2003 does not apply to taxes on any service
32 that historically or traditionally has been taxed as a utility business
33 for municipal tax purposes, such as:

34 (1) A light and power business or a natural gas distribution
35 business, as defined in RCW 82.16.010;

36 (2) A telephone business, as defined in RCW (~~82.04.065~~)
37 82.16.010;

- 1 (3) Cable television services;
- 2 (4) Sewer or water services;
- 3 (5) Drainage services;
- 4 (6) Solid waste services; or
- 5 (7) Steam services.

6 **Sec. 1022.** RCW 82.04.530 and 2004 c 153 s 410 are each amended to
7 read as follows:

8 For purposes of this chapter, a ~~((telephone—business))~~
9 telecommunications service provider other than a mobile
10 telecommunications service provider must calculate gross proceeds of
11 ~~((retail))~~ sales in a manner consistent with the sourcing rules
12 provided in RCW 82.32.520. The department may adopt rules to implement
13 this section, including rules that provide a formulary method of
14 determining gross proceeds that reasonably approximates the taxable
15 activity of a telephone business.

16 **Sec. 1023.** RCW 82.16.010 and 1996 c 150 s 1 are each amended to
17 read as follows:

18 For the purposes of this chapter, unless otherwise required by the
19 context:

20 (1) "Railroad business" means the business of operating any
21 railroad, by whatever power operated, for public use in the conveyance
22 of persons or property for hire. It shall not, however, include any
23 business herein defined as an urban transportation business.

24 (2) "Express business" means the business of carrying property for
25 public hire on the line of any common carrier operated in this state,
26 when such common carrier is not owned or leased by the person engaging
27 in such business.

28 (3) "Railroad car business" means the business of operating stock
29 cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank
30 cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any
31 other kinds of cars used for transportation of property or persons upon
32 the line of any railroad operated in this state when such railroad is
33 not owned or leased by the person engaging in such business.

34 (4) "Water distribution business" means the business of operating
35 a plant or system for the distribution of water for hire or sale.

1 (5) "Light and power business" means the business of operating a
2 plant or system for the generation, production or distribution of
3 electrical energy for hire or sale and/or for the wheeling of
4 electricity for others.

5 (6) "Telegraph business" means the business of affording
6 telegraphic communication for hire.

7 (7) "Gas distribution business" means the business of operating a
8 plant or system for the production or distribution for hire or sale of
9 gas, whether manufactured or natural.

10 (8) "Motor transportation business" means the business (except
11 urban transportation business) of operating any motor propelled vehicle
12 by which persons or property of others are conveyed for hire, and
13 includes, but is not limited to, the operation of any motor propelled
14 vehicle as an auto transportation company (except urban transportation
15 business), common carrier or contract carrier as defined by RCW
16 81.68.010 and 81.80.010: PROVIDED, That "motor transportation
17 business" shall not mean or include the transportation of logs or other
18 forest products exclusively upon private roads or private highways.

19 (9) "Urban transportation business" means the business of operating
20 any vehicle for public use in the conveyance of persons or property for
21 hire, insofar as (a) operating entirely within the corporate limits of
22 any city or town, or within five miles of the corporate limits thereof,
23 or (b) operating entirely within and between cities and towns whose
24 corporate limits are not more than five miles apart or within five
25 miles of the corporate limits of either thereof. Included herein, but
26 without limiting the scope hereof, is the business of operating
27 passenger vehicles of every type and also the business of operating
28 cartage, pickup, or delivery services, including in such services the
29 collection and distribution of property arriving from or destined to a
30 point within or without the state, whether or not such collection or
31 distribution be made by the person performing a local or interstate
32 line-haul of such property.

33 (10)(a) "Public service business" means any of the businesses
34 defined in (~~subdivisions~~) subsections (1), (2), (3), (4), (5), (6),
35 (7), (8), and (9) of this section or any business subject to control by
36 the state, or having the powers of eminent domain and the duties
37 incident thereto, or any business hereafter declared by the legislature
38 to be of a public service nature, except telephone business (~~as~~

1 ~~defined in RCW 82.04.065))~~ and low-level radioactive waste site
2 operating companies as redefined in RCW 81.04.010. It includes, among
3 others, without limiting the scope hereof: Airplane transportation,
4 boom, dock, ferry, pipe line, toll bridge, toll logging road, water
5 transportation and wharf businesses.

6 (b) The definitions in this subsection (10)(b) apply throughout
7 this subsection (10).

8 (i) "Competitive telephone service" has the same meaning as in RCW
9 82.04.065.

10 (ii) "Network telephone service" means the providing by any person
11 of access to a telephone network, telephone network switching service,
12 toll service, or coin telephone services, or the providing of
13 telephonic, video, data, or similar communication or transmission for
14 hire, via a telephone network, toll line or channel, cable, microwave,
15 or similar communication or transmission system. "Network telephone
16 service" includes the provision of transmission to and from the site of
17 an internet provider via a telephone network, toll line or channel,
18 cable, microwave, or similar communication or transmission system.
19 "Network telephone service" does not include the providing of
20 competitive telephone service, the providing of cable television
21 service, the providing of broadcast services by radio or television
22 stations, nor the provision of internet service as defined in RCW
23 82.04.297, including the reception of dial-in connection, provided at
24 the site of the internet service provider.

25 (iii) "Telephone business" means the business of providing network
26 telephone service. It includes cooperative or farmer line telephone
27 companies or associations operating an exchange.

28 (iv) "Telephone service" means competitive telephone service or
29 network telephone service, or both, as defined in (b)(i) and (ii) of
30 this subsection.

31 (11) "Tugboat business" means the business of operating tugboats,
32 towboats, wharf boats or similar vessels in the towing or pushing of
33 vessels, barges or rafts for hire.

34 (12) "Gross income" means the value proceeding or accruing from the
35 performance of the particular public service or transportation business
36 involved, including operations incidental thereto, but without any
37 deduction on account of the cost of the commodity furnished or sold,

1 the cost of materials used, labor costs, interest, discount, delivery
2 costs, taxes, or any other expense whatsoever paid or accrued and
3 without any deduction on account of losses.

4 (13) The meaning attributed, in chapter 82.04 RCW, to the term "tax
5 year," "person," "value proceeding or accruing," "business," "engaging
6 in business," "in this state," "within this state," "cash discount" and
7 "successor" shall apply equally in the provisions of this chapter.

8 **Sec. 1024.** RCW 82.14B.030 and 2002 c 341 s 8 and 2002 c 67 § 8 are
9 each reenacted and amended to read as follows:

10 (1) The legislative authority of a county may impose a county
11 enhanced 911 excise tax on the use of switched access lines in an
12 amount not exceeding fifty cents per month for each switched access
13 line. The amount of tax shall be uniform for each switched access
14 line. Each county shall provide notice of such tax to all local
15 exchange companies serving in the county at least sixty days in advance
16 of the date on which the first payment is due.

17 (2) The legislative authority of a county may also impose a county
18 enhanced 911 excise tax on the use of radio access lines whose place of
19 primary use is located within the county in an amount not exceeding
20 fifty cents per month for each radio access line. The amount of tax
21 shall be uniform for each radio access line. (~~The location of a radio
22 access line is the customer's place of primary use as defined in RCW
23 82.04.065.~~) The county shall provide notice of such tax to all radio
24 communications service companies serving in the county at least sixty
25 days in advance of the date on which the first payment is due. Any
26 county imposing this tax shall include in its ordinance a refund
27 mechanism whereby the amount of any tax ordered to be refunded by the
28 judgment of a court of record, or as a result of the resolution of any
29 appeal therefrom, shall be refunded to the radio communications service
30 company or local exchange company that collected the tax, and those
31 companies shall reimburse the subscribers who paid the tax. The
32 ordinance shall further provide that to the extent the subscribers who
33 paid the tax cannot be identified or located, the tax paid by those
34 subscribers shall be returned to the county.

35 (3) A state enhanced 911 excise tax is imposed on all switched
36 access lines in the state. The amount of tax shall not exceed twenty
37 cents per month for each switched access line. The tax shall be

1 uniform for each switched access line. The tax imposed under this
2 subsection shall be remitted to the department of revenue by local
3 exchange companies on a tax return provided by the department. Tax
4 proceeds shall be deposited by the treasurer in the enhanced 911
5 account created in RCW 38.52.540.

6 (4) A state enhanced 911 excise tax is imposed on all radio access
7 lines whose place of primary use is located within the state in an
8 amount of twenty cents per month for each radio access line. The tax
9 shall be uniform for each radio access line. The tax imposed under
10 this section shall be remitted to the department of revenue by radio
11 communications service companies, including those companies that resell
12 radio access lines, on a tax return provided by the department. Tax
13 proceeds shall be deposited by the treasurer in the enhanced 911
14 account created in RCW 38.52.540. The tax imposed under this section
15 is not subject to the state sales and use tax or any local tax.

16 (5) By August 31st of each year the state enhanced 911 coordinator
17 shall recommend the level for the next year of the state enhanced 911
18 excise tax imposed by subsection (3) of this section, based on a
19 systematic cost and revenue analysis, to the utilities and
20 transportation commission. The commission shall by the following
21 October 31st determine the level of the state enhanced 911 excise tax
22 for the following year.

23 **PART XI**
24 **DURABLE MEDICAL EQUIPMENT**

25 **Sec. 1101.** RCW 82.08.0283 and 2004 c 153 s 101 are each amended to
26 read as follows:

27 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

28 (a) Prosthetic devices prescribed, fitted, or furnished for an
29 individual by a person licensed under the laws of this state to
30 prescribe, fit, or furnish prosthetic devices, and the components of
31 such prosthetic devices;

32 (b) Medicines of mineral, animal, and botanical origin prescribed,
33 administered, dispensed, or used in the treatment of an individual by
34 a person licensed under chapter 18.36A RCW; ((and))

35 (c) ((Medically prescribed oxygen, including, but not limited to,
36 oxygen concentrator systems, oxygen enricher systems, liquid oxygen

1 ~~systems, and~~) Durable medical equipment, and the components of durable
2 medical equipment, for home use and prescribed by a person licensed
3 under the laws of this state to prescribe such equipment; and

4 (d) Gaseous(~~(τ)~~) or liquid bottled oxygen (~~(systems)~~) used with
5 durable medical equipment prescribed for an individual by a person
6 licensed under (~~(chapter 18.57 or 18.71 RCW)~~) the laws of this state
7 for use in the medical treatment of (~~(that)~~) an individual for home
8 use.

9 (2) In addition, the tax levied by RCW 82.08.020 shall not apply to
10 charges made for labor and services rendered in respect to the
11 repairing, cleaning, altering, or improving of any of the items
12 exempted under subsection (1) of this section.

13 (3) The exemption in subsection (1) of this section shall not apply
14 to sales of (~~(durable medical equipment or)~~) mobility enhancing
15 equipment.

16 (4) The definitions in this subsection apply throughout this
17 section.

18 (a) "Prosthetic device" means a replacement, corrective, or
19 supportive device, including repair and replacement parts for a
20 prosthetic device, worn on or in the body to:

- 21 (i) Artificially replace a missing portion of the body;
22 (ii) Prevent or correct a physical deformity or malfunction; or
23 (iii) Support a weak or deformed portion of the body.

24 (b) "Durable medical equipment" means equipment, including repair
25 and replacement parts for durable medical equipment that:

- 26 (i) Can withstand repeated use;
27 (ii) Is primarily and customarily used to serve a medical purpose;
28 (iii) Generally is not useful to a person in the absence of illness
29 or injury; and

30 (iv) (~~(Does not work)~~) Is not worn in or on the body.

31 (c) "Mobility enhancing equipment" means equipment, including
32 repair and replacement parts for mobility enhancing equipment that:

33 (i) Is primarily and customarily used to provide or increase the
34 ability to move from one place to another and that is appropriate for
35 use either in a home or a motor vehicle;

36 (ii) Is not generally used by persons with normal mobility; and

37 (iii) Does not include any motor vehicle or equipment on a motor
38 vehicle normally provided by a motor vehicle manufacturer.

1 (d) The terms "durable medical equipment" and "mobility enhancing
2 equipment" are mutually exclusive.

3 NEW SECTION. **Sec. 1102.** A new section is added to chapter 82.08
4 RCW to read as follows:

5 (1) An exemption from the tax imposed by RCW 82.08.020 in the form
6 of a refund is provided for sales of:

7 (a) Medically prescribed oxygen, including, but not limited to,
8 oxygen concentrator systems, oxygen enricher systems, liquid oxygen
9 systems, and gaseous, bottled oxygen systems prescribed for an
10 individual by a person licensed under chapter 18.57 or 18.71 RCW for
11 use in the medical treatment of that individual for other than home
12 use;

13 (b) Repair, replacement, and component parts for medically
14 prescribed oxygen for other than home use; and

15 (c) Labor and services rendered in respect to the repairing,
16 cleaning, altering, or improving of medically prescribed oxygen for
17 other than home use.

18 (2) Sellers shall collect tax on sales subject to this exemption.
19 The buyer shall apply for a refund directly from the department in a
20 form and manner prescribed by the department.

21 **Sec. 1103.** RCW 82.12.0277 and 2004 c 153 s 109 are each amended to
22 read as follows:

23 (1) The provisions of this chapter shall not apply in respect to
24 the use of:

25 (a) Prosthetic devices prescribed, fitted, or furnished for an
26 individual by a person licensed under the laws of this state to
27 prescribe, fit, or furnish prosthetic devices, and the components of
28 such prosthetic devices;

29 (b) Medicines of mineral, animal, and botanical origin prescribed,
30 administered, dispensed, or used in the treatment of an individual by
31 a person licensed under chapter 18.36A RCW; ~~((and))~~

32 ~~((Medically prescribed oxygen, including, but not limited to,~~
33 ~~oxygen concentrator systems, oxygen enricher systems, liquid oxygen~~
34 ~~systems, and)) Durable medical equipment, and the components of durable
35 medical equipment, for home use and prescribed by a person licensed
36 under the laws of this state to prescribe such equipment; and~~

1 (d) Gaseous(~~(τ)~~) or liquid bottled oxygen (~~(systems)~~) used with
2 durable medical equipment prescribed for an individual by a person
3 licensed under (~~chapter 18.57 or 18.71 RCW~~) the laws of this state
4 for use in the medical treatment of (~~that~~) an individual for home
5 use.

6 (2) In addition, the provisions of this chapter shall not apply in
7 respect to the use of labor and services rendered in respect to the
8 repairing, cleaning, altering, or improving of any of the items
9 exempted under subsection (1) of this section.

10 (3) The exemption provided by subsection (1) of this section shall
11 not apply to the use of (~~durable medical equipment or~~) mobility
12 enhancing equipment.

13 (4) "Prosthetic device," "durable medical equipment," and "mobility
14 enhancing equipment" have the same meanings as in RCW 82.08.0283.

15 **NEW SECTION. Sec. 1104.** A new section is added to chapter 82.12
16 RCW to read as follows:

17 (1) The provisions of this chapter shall not apply in respect to
18 the use of:

19 (a) Medically prescribed oxygen, including, but not limited to,
20 oxygen concentrator systems, oxygen enricher systems, liquid oxygen
21 systems, and gaseous, bottled oxygen systems prescribed for an
22 individual by a person licensed under chapter 18.57 or 18.71 RCW for
23 use in the medical treatment of that individual for other than home
24 use;

25 (b) Repair, replacement, and component parts for medically
26 prescribed oxygen; and

27 (c) Labor and services rendered in respect to the repairing,
28 cleaning, altering, or improving of medically prescribed oxygen.

29 (2) Sellers obligated to collect use tax shall collect tax on sales
30 subject to this exemption. The buyer shall apply for a refund directly
31 from the department in a form and manner prescribed by the department.

32 **Sec. 1105.** RCW 82.08.803 and 2004 c 153 s 104 are each amended to
33 read as follows:

34 (~~The tax levied by RCW 82.08.020 shall not apply to~~) (1) An
35 exemption from the tax imposed by RCW 82.08.020 in the form of a refund
36 is provided for sales of nebulizers for other than home use, including

1 repair ~~((and))~~, replacement, and component parts for such nebulizers,
2 for human use pursuant to a prescription. In addition, the tax levied
3 by RCW 82.08.020 shall not apply to charges made for labor and services
4 rendered in respect to the repairing, cleaning, altering, or improving
5 of nebulizers for other than home use. "Nebulizer" means a device, not
6 a building fixture, that converts a liquid medication into a mist so
7 that it can be inhaled.

8 (2) Sellers shall collect tax on sales subject to this exemption.
9 The buyer shall apply for a refund directly from the department in a
10 form and manner prescribed by the department.

11 **Sec. 1106.** RCW 82.12.803 and 2004 c 153 s 105 are each amended to
12 read as follows:

13 (1) The provisions of this chapter shall not apply in respect to
14 the use of nebulizers for other than home use, including repair
15 ~~((and))~~, replacement, and component parts for such nebulizers, for
16 human use pursuant to a prescription. In addition, the provisions of
17 this chapter shall not apply in respect to labor and services rendered
18 in respect to the repairing, cleaning, altering, or improving of
19 nebulizers for other than home use. "Nebulizer" has the same meaning
20 as in RCW 82.08.803.

21 (2) Sellers obligated to collect use tax shall collect tax on sales
22 subject to this exemption. The buyer shall apply for a refund directly
23 from the department in a form and manner prescribed by the department.

24 **Sec. 1107.** RCW 82.08.945 and 2004 c 153 s 110 are each amended to
25 read as follows:

26 ~~((The tax levied by RCW 82.08.020 shall not apply to))~~ (1) An
27 exemption from the tax imposed by RCW 82.08.020 in the form of a refund
28 is provided for sales of kidney dialysis devices for other than home
29 use, including repair ~~((and))~~, replacement, and component parts, for
30 human use pursuant to a prescription. In addition, the tax levied by
31 RCW 82.08.020 shall not apply to charges made for labor and services
32 rendered in respect to the repairing, cleaning, altering, or improving
33 of kidney dialysis devices for other than home use.

34 (2) Sellers shall collect tax on sales subject to this exemption.
35 The buyer shall apply for a refund directly from the department in a
36 form and manner prescribed by the department.

1 ~~((+5+))~~ (4) As used in this section, "resale certificate" means
2 documentation provided by a buyer to a seller stating that the purchase
3 is for resale in the regular course of business, or that the buyer is
4 exempt from retail sales tax, and containing the following information:

5 (a) The name and address of the buyer;

6 (b) The uniform business identifier or revenue registration number
7 of the buyer, if the buyer is required to be registered;

8 (c) The type of business engaged in;

9 (d) The categories of items or services to be purchased for resale
10 or that are exempt, unless the buyer ~~((is in a business classification
11 that may))~~ presents a blanket resale certificate ~~((as provided by the
12 department by rule))~~;

13 (e) The date on which the certificate was provided;

14 (f) A statement that the items or services purchased either: (i)
15 Are purchased for resale in the regular course of business; or (ii) are
16 exempt from tax pursuant to statute;

17 (g) A statement that the buyer acknowledges that the buyer is
18 solely responsible for purchasing within the categories specified on
19 the certificate and that misuse of the resale or exemption privilege
20 claimed on the certificate subjects the buyer to a penalty of fifty
21 percent of the tax due, in addition to the tax, interest, and any other
22 penalties imposed by law;

23 (h) The name of the individual authorized to sign the certificate,
24 printed in a legible fashion;

25 (i) The signature of the authorized individual; and

26 (j) The name of the seller.

27 ~~((+6+))~~ (5) Subsection ~~((+5+))~~ (4)(h), (i), and (j) of this section
28 does not apply if the certificate is provided in a format other than
29 paper. If the certificate is provided in a format other than paper,
30 the name of the individual providing the certificate must be included
31 in the certificate.

32 **Sec. 1202.** RCW 82.08.050 and 2003 c 168 s 203, 2003 c 76 s 3, and
33 2003 c 53 s 400 are each reenacted and amended to read as follows:

34 (1) The tax hereby imposed shall be paid by the buyer to the
35 seller, and each seller shall collect from the buyer the full amount of
36 the tax payable in respect to each taxable sale in accordance with the

1 schedule of collections adopted by the department pursuant to the
2 provisions of RCW 82.08.060.

3 (2) The tax required by this chapter, to be collected by the
4 seller, shall be deemed to be held in trust by the seller until paid to
5 the department, and any seller who appropriates or converts the tax
6 collected to his or her own use or to any use other than the payment of
7 the tax to the extent that the money required to be collected is not
8 available for payment on the due date as prescribed in this chapter is
9 guilty of a gross misdemeanor.

10 (3) In case any seller fails to collect the tax herein imposed or,
11 having collected the tax, fails to pay it to the department in the
12 manner prescribed by this chapter, whether such failure is the result
13 of his or her own acts or the result of acts or conditions beyond his
14 or her control, he or she shall, nevertheless, be personally liable to
15 the state for the amount of the tax, unless the seller has taken from
16 the buyer a resale certificate under RCW 82.04.470, a copy of a direct
17 pay permit issued under RCW 82.32.087, an exemption certificate
18 claiming multiple points of use under section 501(5) of this act, a
19 direct mail form under section 501(6) of this act, or other information
20 required under the streamlined sales and use tax agreement, or
21 information required under rules adopted by the department.

22 (4) Sellers shall not be relieved from personal liability for the
23 amount of the tax unless they maintain proper records of exempt
24 transactions and provide them to the department when requested.

25 ~~((4))~~ (5) Sellers are not relieved from personal liability for
26 the amount of tax if they fraudulently fail to collect the tax or if
27 they solicit purchasers to participate in an unlawful claim of
28 exemption.

29 (6) Sellers are not relieved from personal liability for the amount
30 of tax if they accept an exemption certificate from a purchaser
31 claiming an entity-based exemption if:

32 (a) The subject of the transaction sought to be covered by the
33 exemption certificate is actually received by the purchaser at a
34 location operated by the seller in Washington; and

35 (b) Washington provides an exemption certificate that clearly and
36 affirmatively indicates that the claimed exemption is not available in
37 Washington. Graying out exemption reason types on a uniform form and

1 posting it on the department's web site is a clear and affirmative
2 indication that the grayed out exemptions are not available.

3 (7) Sellers are not relieved from personal liability for the amount
4 of tax if they accept an exemption certificate claiming multiple points
5 of use for tangible personal property other than computer software for
6 which an exemption certificate claiming multiple points of use is
7 acceptable under section 501(5) of this act.

8 (8)(a) Sellers are relieved from personal liability for the amount
9 of tax if they obtain a fully completed exemption certificate or
10 capture the relevant data elements required under the streamlined sales
11 and use tax agreement within ninety days, or a longer period as may be
12 provided by rule by the department, subsequent to the date of sale.

13 (b) If the seller has not obtained an exemption certificate or all
14 relevant data elements required under the streamlined sales and use tax
15 agreement within the period allowed subsequent to the date of sale, the
16 seller may, within one hundred twenty days, or a longer period as may
17 be provided by rule by the department, subsequent to a request for
18 substantiation by the department, either prove that the transaction was
19 not subject to tax by other means or obtain a fully completed exemption
20 certificate from the purchaser, taken in good faith.

21 (c) Sellers are relieved from personal liability for the amount of
22 tax if they obtain a blanket exemption certificate for a purchaser with
23 which the seller has a recurring business relationship. The department
24 may not request from a seller renewal of blanket certificates or
25 updates of exemption certificate information or data elements if there
26 is a recurring business relationship between the buyer and seller. For
27 purposes of this subsection (8)(c), a "recurring business relationship"
28 means at least one sale transaction within a period of twelve
29 consecutive months.

30 (9) The amount of tax, until paid by the buyer to the seller or to
31 the department, shall constitute a debt from the buyer to the seller
32 and any seller who fails or refuses to collect the tax as required with
33 intent to violate the provisions of this chapter or to gain some
34 advantage or benefit, either direct or indirect, and any buyer who
35 refuses to pay any tax due under this chapter is guilty of a
36 misdemeanor.

37 ((+5)) (10) The tax required by this chapter to be collected by
38 the seller shall be stated separately from the selling price in any

1 sales invoice or other instrument of sale. On all retail sales through
2 vending machines, the tax need not be stated separately from the
3 selling price or collected separately from the buyer. For purposes of
4 determining the tax due from the buyer to the seller and from the
5 seller to the department it shall be conclusively presumed that the
6 selling price quoted in any price list, sales document, contract or
7 other agreement between the parties does not include the tax imposed by
8 this chapter, but if the seller advertises the price as including the
9 tax or that the seller is paying the tax, the advertised price shall
10 not be considered the selling price.

11 ~~((+6+))~~ (11) Where a buyer has failed to pay to the seller the tax
12 imposed by this chapter and the seller has not paid the amount of the
13 tax to the department, the department may, in its discretion, proceed
14 directly against the buyer for collection of the tax, in which case a
15 penalty of ten percent may be added to the amount of the tax for
16 failure of the buyer to pay the same to the seller, regardless of when
17 the tax may be collected by the department; and all of the provisions
18 of chapter 82.32 RCW, including those relative to interest and
19 penalties, shall apply in addition; and, for the sole purpose of
20 applying the various provisions of chapter 82.32 RCW, the twenty-fifth
21 day of the month following the tax period in which the purchase was
22 made shall be considered as the due date of the tax.

23 ~~((+7+))~~ (12) Notwithstanding subsections (1) through ~~((+6+))~~ (11)
24 of this section, any person making sales is not obligated to collect
25 the tax imposed by this chapter if:

26 (a) The person's activities in this state, whether conducted
27 directly or through another person, are limited to:

28 (i) The storage, dissemination, or display of advertising;

29 (ii) The taking of orders; or

30 (iii) The processing of payments; and

31 (b) The activities are conducted electronically via a web site on
32 a server or other computer equipment located in Washington that is not
33 owned or operated by the person making sales into this state nor owned
34 or operated by an affiliated person. "Affiliated persons" has the same
35 meaning as provided in RCW 82.04.424.

36 ~~((+8+))~~ (13) Subsection ~~((+7+))~~ (12) of this section expires when:

37 (a) The United States congress grants individual states the authority
38 to impose sales and use tax collection duties on remote sellers; or (b)

1 it is determined by a court of competent jurisdiction, in a judgment
2 not subject to review, that a state can impose sales and use tax
3 collection duties on remote sellers.

4 **PART XIII**
5 **SALES PRICE**

6 **Sec. 1301.** RCW 82.08.010 and 2005 c 514 s 110 are each amended to
7 read as follows:

8 For the purposes of this chapter:

9 (1) "Selling price" includes "sales price." "Sales price" means
10 the total amount of consideration, except separately stated trade-in
11 property of like kind, including cash, credit, property, and services,
12 for which tangible personal property, extended warranties, or services
13 defined as a "retail sale" under RCW 82.04.050 are sold, leased, or
14 rented, valued in money, whether received in money or otherwise. No
15 deduction from the total amount of consideration is allowed for the
16 following: (a) The seller's cost of the property sold; (b) the cost of
17 materials used, labor or service cost, interest, losses, all costs of
18 transportation to the seller, all taxes imposed on the seller, and any
19 other expense of the seller; (c) charges by the seller for any services
20 necessary to complete the sale, other than delivery and installation
21 charges; (d) delivery charges; and (e) installation charges(~~(; and (f)~~
22 ~~the value of exempt tangible personal property given to the purchaser~~
23 ~~where taxable and exempt tangible personal property have been bundled~~
24 ~~together and sold by the seller as a single product or piece of~~
25 ~~merchandise)).~~

26 When tangible personal property is rented or leased under
27 circumstances that the consideration paid does not represent a
28 reasonable rental for the use of the articles so rented or leased, the
29 "selling price" shall be determined as nearly as possible according to
30 the value of such use at the places of use of similar products of like
31 quality and character under such rules as the department may prescribe.

32 "Selling price" or "sales price" does not include: Discounts,
33 including cash, term, or coupons that are not reimbursed by a third
34 party that are allowed by a seller and taken by a purchaser on a sale;
35 interest, financing, and carrying charges from credit extended on the
36 sale of tangible personal property, extended warranties, or services,

1 if the amount is separately stated on the invoice, bill of sale, or
2 similar document given to the purchaser; and any taxes legally imposed
3 directly on the consumer that are separately stated on the invoice,
4 bill of sale, or similar document given to the purchaser;

5 (2) "Seller" means every person, including the state and its
6 departments and institutions, making sales at retail or retail sales to
7 a buyer, purchaser, or consumer, whether as agent, broker, or
8 principal, except "seller" does not mean the state and its departments
9 and institutions when making sales to the state and its departments and
10 institutions;

11 (3) "Buyer," "purchaser," and "consumer" include, without limiting
12 the scope hereof, every individual, receiver, assignee, trustee in
13 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
14 company, joint stock company, business trust, corporation, association,
15 society, or any group of individuals acting as a unit, whether mutual,
16 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
17 quasi municipal corporation, and also the state, its departments and
18 institutions and all political subdivisions thereof, irrespective of
19 the nature of the activities engaged in or functions performed, and
20 also the United States or any instrumentality thereof;

21 (4) "Delivery charges" means charges by the seller of personal
22 property or services for preparation and delivery to a location
23 designated by the purchaser of personal property or services including,
24 but not limited to, transportation, shipping, postage, handling,
25 crating, and packing;

26 (5) "Direct mail" means printed material delivered or distributed
27 by United States mail or other delivery service to a mass audience or
28 to addressees on a mailing list provided by the purchaser or at the
29 direction of the purchaser when the cost of the items are not billed
30 directly to the recipients. "Direct mail" includes tangible personal
31 property supplied directly or indirectly by the purchaser to the direct
32 mail seller for inclusion in the package containing the printed
33 material. "Direct mail" does not include multiple items of printed
34 material delivered to a single address;

35 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
36 year," "taxable year," "person," "company," "sale," "sale at retail,"
37 "retail sale," "sale at wholesale," "wholesale," "business," "engaging

1 in business," "cash discount," "successor," "consumer," "in this state"
2 and "within this state" shall apply equally to the provisions of this
3 chapter;

4 (7) For the purposes of the taxes imposed under this chapter and
5 under chapter 82.12 RCW, "tangible personal property" means personal
6 property that can be seen, weighed, measured, felt, or touched, or that
7 is in any other manner perceptible to the senses. Tangible personal
8 property includes electricity, water, gas, steam, and prewritten
9 computer software;

10 (8) "Extended warranty" has the same meaning as in RCW
11 82.04.050(7).

12 **Sec. 1302.** RCW 82.08.010 and 2005 c 514 s 110 are each amended to
13 read as follows:

14 For the purposes of this chapter:

15 (1)(a) "Selling price" includes "sales price." "Sales price" means
16 the total amount of consideration, except separately stated trade-in
17 property of like kind, including cash, credit, property, and services,
18 for which tangible personal property, extended warranties, or services
19 defined as a "retail sale" under RCW 82.04.050 are sold, leased, or
20 rented, valued in money, whether received in money or otherwise. No
21 deduction from the total amount of consideration is allowed for the
22 following: ~~((a))~~ (i) The seller's cost of the property sold; ~~((b))~~
23 (ii) the cost of materials used, labor or service cost, interest,
24 losses, all costs of transportation to the seller, all taxes imposed on
25 the seller, and any other expense of the seller; ~~((c))~~ (iii) charges
26 by the seller for any services necessary to complete the sale, other
27 than delivery and installation charges; ~~((d))~~ (iv) delivery charges;
28 ~~((e))~~ and (v) installation charges ~~((; and (f) the value of exempt~~
29 ~~tangible personal property given to the purchaser where taxable and~~
30 ~~exempt tangible personal property have been bundled together and sold~~
31 ~~by the seller as a single product or piece of merchandise)).~~

32 When tangible personal property is rented or leased under
33 circumstances that the consideration paid does not represent a
34 reasonable rental for the use of the articles so rented or leased, the
35 "selling price" shall be determined as nearly as possible according to
36 the value of such use at the places of use of similar products of like
37 quality and character under such rules as the department may prescribe.

1 **(b) "Selling price" or "sales price" does not include: Discounts,**
2 **including cash, term, or coupons that are not reimbursed by a third**
3 **party that are allowed by a seller and taken by a purchaser on a sale;**
4 **interest, financing, and carrying charges from credit extended on the**
5 **sale of tangible personal property, extended warranties, or services,**
6 **if the amount is separately stated on the invoice, bill of sale, or**
7 **similar document given to the purchaser; and any taxes legally imposed**
8 **directly on the consumer that are separately stated on the invoice,**
9 **bill of sale, or similar document given to the purchaser;**

10 **(c) "Selling price" or "sales price" includes consideration**
11 **received by the seller from a third party if:**

12 **(i) The seller actually receives consideration from a party other**
13 **than the purchaser, and the consideration is directly related to a**
14 **price reduction or discount on the sale;**

15 **(ii) The seller has an obligation to pass the price reduction or**
16 **discount through to the purchaser;**

17 **(iii) The amount of the consideration attributable to the sale is**
18 **fixed and determinable by the seller at the time of the sale of the**
19 **item to the purchaser: and**

20 **(iv) One of the criteria in this subsection (1)(c)(iv) is met:**

21 **(A) The purchaser presents a coupon, certificate, or other**
22 **documentation to the seller to claim a price reduction or discount**
23 **where the coupon, certificate, or documentation is authorized,**
24 **distributed, or granted by a third party with the understanding that**
25 **the third party will reimburse any seller to whom the coupon,**
26 **certificate, or documentation is presented;**

27 **(B) The purchaser identifies himself or herself to the seller as a**
28 **member of a group or organization entitled to a price reduction or**
29 **discount, however a "preferred customer" card that is available to any**
30 **patron does not constitute membership in such a group; or**

31 **(C) The price reduction or discount is identified as a third party**
32 **price reduction or discount on the invoice received by the purchaser or**
33 **on a coupon, certificate, or other documentation presented by the**
34 **purchaser.**

35 **(2) "Seller" means every person, including the state and its**
36 **departments and institutions, making sales at retail or retail sales to**
37 **a buyer, purchaser, or consumer, whether as agent, broker, or**

1 principal, except "seller" does not mean the state and its departments
2 and institutions when making sales to the state and its departments and
3 institutions;

4 (3) "Buyer," "purchaser," and "consumer" include, without limiting
5 the scope hereof, every individual, receiver, assignee, trustee in
6 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
7 company, joint stock company, business trust, corporation, association,
8 society, or any group of individuals acting as a unit, whether mutual,
9 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
10 quasi municipal corporation, and also the state, its departments and
11 institutions and all political subdivisions thereof, irrespective of
12 the nature of the activities engaged in or functions performed, and
13 also the United States or any instrumentality thereof;

14 (4) "Delivery charges" means charges by the seller of personal
15 property or services for preparation and delivery to a location
16 designated by the purchaser of personal property or services including,
17 but not limited to, transportation, shipping, postage, handling,
18 crating, and packing;

19 (5) "Direct mail" means printed material delivered or distributed
20 by United States mail or other delivery service to a mass audience or
21 to addressees on a mailing list provided by the purchaser or at the
22 direction of the purchaser when the cost of the items are not billed
23 directly to the recipients. "Direct mail" includes tangible personal
24 property supplied directly or indirectly by the purchaser to the direct
25 mail seller for inclusion in the package containing the printed
26 material. "Direct mail" does not include multiple items of printed
27 material delivered to a single address;

28 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
29 year," "taxable year," "person," "company," "sale," "sale at retail,"
30 "retail sale," "sale at wholesale," "wholesale," "business," "engaging
31 in business," "cash discount," "successor," "consumer," "in this state"
32 and "within this state" shall apply equally to the provisions of this
33 chapter;

34 (7) For the purposes of the taxes imposed under this chapter and
35 under chapter 82.12 RCW, "tangible personal property" means personal
36 property that can be seen, weighed, measured, felt, or touched, or that
37 is in any other manner perceptible to the senses. Tangible personal

1 property includes electricity, water, gas, steam, and prewritten
2 computer software;
3 (8) "Extended warranty" has the same meaning as in RCW
4 82.04.050(7).

5 **PART XIV**
6 **BUNDLED TRANSACTIONS**

7 NEW SECTION. **Sec. 1401.** A new section is added to chapter 82.08
8 RCW to read as follows:

9 The definitions in this section apply throughout this chapter,
10 unless the context clearly requires otherwise.

11 (1)(a) "Bundled transaction" means the retail sale of two or more
12 products, except real property and services to real property, where:

- 13 (i) The products are otherwise distinct and identifiable; and
- 14 (ii) The products are sold for one nonitemized price.

15 (b) A bundled transaction does not include the sale of any products
16 in which the sales price varies, or is negotiable, based on the
17 selection by the purchaser of the products included in the transaction.

18 (2) "Distinct and identifiable products" does not include:

19 (a) Packaging such as containers, boxes, sacks, bags, and bottles,
20 or other materials such as wrapping, labels, tags, and instruction
21 guides, that accompany the retail sale of the products and are
22 incidental or immaterial to the retail sale thereof. Examples of
23 packaging that are incidental or immaterial include grocery sacks,
24 shoeboxes, dry cleaning garment bags, and express delivery envelopes
25 and boxes;

26 (b) A product provided free of charge with the required purchase of
27 another product. A product is provided free of charge if the sales
28 price of the product purchased does not vary depending on the inclusion
29 of the product provided free of charge; or

30 (c) Items included in the definition of sales price in RCW
31 82.08.010.

32 (3) "One nonitemized price" does not include a price that is
33 separately identified by product on binding sales or other supporting
34 sales-related documentation made available to the customer in paper or
35 electronic form including, but not limited to, an invoice, bill of

1 sale, receipt, contract, service agreement, lease agreement, periodic
2 notice of rates and services, rate card, or price list.

3 (4) A transaction that otherwise meets the definition of a bundled
4 transaction is not a bundled transaction if it is:

5 (a) The retail sale of tangible personal property and a service
6 where the tangible personal property is essential to the use of the
7 service, and is provided exclusively in connection with the service,
8 and the true object of the transaction is the service; or

9 (b) The retail sale of services where one service is provided that
10 is essential to the use or receipt of a second service and the first
11 service is provided exclusively in connection with the second service
12 and the true object of the transaction is the second service; or

13 (c) A transaction that includes taxable products and nontaxable
14 products and the purchase price or sales price of the taxable products
15 is de minimis;

16 (i) As used in this subsection (4)(c), de minimis means the
17 seller's purchase price or sales price of the taxable products is ten
18 percent or less of the total purchase price or sales price of the
19 bundled products;

20 (ii) Sellers shall use either the purchase price or the sales price
21 of the products to determine if the taxable products are de minimis;

22 (iii) Sellers shall use the full term of a service contract to
23 determine if the taxable products are de minimis; or

24 (d) The retail sale of exempt tangible personal property and
25 taxable tangible personal property where:

26 (i) The transaction includes food and food ingredients, drugs,
27 durable medical equipment, mobility enhancing equipment, over-the-
28 counter drugs, prosthetic devices, all as defined in this chapter, or
29 medical supplies; and

30 (ii) Where the seller's purchase price or sales price of the
31 taxable tangible personal property is fifty percent or less of the
32 total purchase price or sales price of the bundled tangible personal
33 property. Sellers may not use a combination of the purchase price and
34 sales price of the tangible personal property when making the fifty
35 percent determination for a transaction.

36 NEW SECTION. **Sec. 1402.** A new section is added to chapter 82.08
37 RCW to read as follows:

1 (1) A bundled transaction is subject to the tax imposed by RCW
2 82.08.020 if the retail sale of any of its component products would be
3 subject to the tax imposed by RCW 82.08.020.

4 (2) The transactions described in section 1401(4) (a) and (b) of
5 this act are subject to the tax imposed by RCW 82.08.020 if the service
6 that is the true object of the transaction is subject to the tax
7 imposed by RCW 82.08.020. If the service that is the true object of
8 the transaction is not subject to the tax imposed by RCW 82.08.020, the
9 transaction is not subject to the tax imposed by RCW 82.08.020.

10 (3) The transaction described in section 1401(4)(c) of this act is
11 not subject to the tax imposed by RCW 82.08.020.

12 (4) The transaction described in section 1401(4)(d) of this act is
13 not subject to the tax imposed by RCW 82.08.020.

14 (5) In the case of a bundled transaction that includes any of the
15 following: Telecommunications service, ancillary service, internet
16 access, or audio or video programming service:

17 (a) If the price is attributable to products that are taxable and
18 products that are not taxable, the portion of the price attributable to
19 the nontaxable products are subject to the tax imposed by RCW 82.08.020
20 unless the seller can identify by reasonable and verifiable standards
21 the portion from its books and records that are kept in the regular
22 course of business for other purposes, including, but not limited to,
23 nontax purposes;

24 (b) If the price is attributable to products that are subject to
25 tax at different tax rates, the total price is attributable to the
26 products subject to the tax at the highest tax rate unless the seller
27 can identify by reasonable and verifiable standards the portion of the
28 price attributable to the products subject to the tax imposed by RCW
29 82.08.020 at the lower rate from its books and records that are kept in
30 the regular course of business for other purposes, including, but not
31 limited to, nontax purposes.

32 NEW SECTION. **Sec. 1403.** A new section is added to chapter 82.12
33 RCW to read as follows:

34 (1) The use of each product acquired in a bundled transaction is
35 subject to the tax imposed by RCW 82.12.020 if the use of any of its
36 component products is subject to the tax imposed by RCW 82.12.020.

1 (2) The use of each product acquired in a transaction described in
2 section 1401(4) (a) or (b) of this act is subject to the tax imposed by
3 RCW 82.12.020 if the service that is the true object of the transaction
4 is subject to the tax imposed by RCW 82.12.020. If the service that is
5 the true object of the transaction is not subject to the tax imposed by
6 RCW 82.12.020, the use of each product acquired in the transaction is
7 not subject to the tax imposed by RCW 82.12.020.

8 (3) The use of each product acquired in a transaction described in
9 section 1401(4)(c) of this act is not subject to the tax imposed by RCW
10 82.12.020.

11 (4) The use of each product in a transaction described in section
12 1401(4)(d) of this act is not subject to the tax imposed by RCW
13 82.12.020.

14 (5) The definitions in section 1401 of this act apply to this
15 section.

16 **PART XV**

17 **GEOGRAPHIC INFORMATION SYSTEM**

18 **Sec. 1501.** RCW 82.32.430 and 2003 c 168 s 207 are each amended to
19 read as follows:

20 (1) A person who collects and remits sales or use tax to the
21 department and who calculates the tax using geographic information
22 system technology developed and provided by the department shall be
23 held harmless and is not liable for the difference in amount due nor
24 subject to penalties or interest in regards to rate calculation errors
25 resulting from the proper use of such technology.

26 (2) Except as provided in subsection (3) of this section, the
27 department shall notify sellers who collect and remit sales or use tax
28 to the department of changes in boundaries and rates to taxes imposed
29 ~~((by))~~ under the authority of chapter 82.14 RCW no later than sixty
30 days before the effective date of the change.

31 (3) The department shall notify sellers who collect and remit sales
32 or use tax to the department and make sales from printed catalogs of
33 changes, as to such sales, of boundaries and rates to taxes imposed
34 ~~((by))~~ under the authority of chapter 82.14 RCW no later than one
35 hundred twenty days before the effective date of the change.

1 (4) Sellers who have not received timely notice of rate and
2 boundary changes under subsections (2) and (3) of this section due to
3 actions or omissions of the department are not liable for the
4 difference in the amount due until they have received the appropriate
5 period of notice. Purchasers are liable for any uncollected amounts of
6 tax.

7 (5)(a) Except as provided in (b) of this subsection, sellers
8 registered with the department under RCW 82.32.030(3) and certified
9 service providers must use the address-based geographic information
10 technology system developed and provided by the department to calculate
11 the tax to be collected and remitted to the department and to determine
12 the appropriate local jurisdictions entitled to the tax.

13 (b)(i) Upon a showing that using the address-based geographic
14 information technology system would cause undue hardship, a seller may
15 be temporarily held harmless and not liable for the difference in
16 amount due nor subject to penalties or interest in regards to rate
17 calculation errors resulting from the proper use of zip code-based
18 technology provided by the department for the period in which relief is
19 granted. The department shall notify local taxing jurisdictions of the
20 identity of sellers granted relief under this section and the period
21 for which relief is granted.

22 (ii) The department shall reimburse local taxing jurisdictions for
23 differences in amount due on account of such rate calculation errors
24 occurring during the period in which relief is granted. Purchasers are
25 liable for any uncollected amounts of tax. The department shall retain
26 amounts collected from purchasers that have been reimbursed to local
27 taxing jurisdictions under this subsection (5)(b)(ii).

28 **Sec. 1502.** RCW 82.32.330 and 2005 c 326 s 1 and 2005 c 274 s 361
29 are each reenacted and amended to read as follows:

30 (1) For purposes of this section:

31 (a) "Disclose" means to make known to any person in any manner
32 whatever a return or tax information;

33 (b) "Return" means a tax or information return or claim for refund
34 required by, or provided for or permitted under, the laws of this state
35 which is filed with the department of revenue by, on behalf of, or with
36 respect to a person, and any amendment or supplement thereto, including

1 supporting schedules, attachments, or lists that are supplemental to,
2 or part of, the return so filed;

3 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
4 nature, source, or amount of the taxpayer's income, payments, receipts,
5 deductions, exemptions, credits, assets, liabilities, net worth, tax
6 liability deficiencies, overassessments, or tax payments, whether taken
7 from the taxpayer's books and records or any other source, (iii)
8 whether the taxpayer's return was, is being, or will be examined or
9 subject to other investigation or processing, (iv) a part of a written
10 determination that is not designated as a precedent and disclosed
11 pursuant to RCW 82.32.410, or a background file document relating to a
12 written determination, and (v) other data received by, recorded by,
13 prepared by, furnished to, or collected by the department of revenue
14 with respect to the determination of the existence, or possible
15 existence, of liability, or the amount thereof, of a person under the
16 laws of this state for a tax, penalty, interest, fine, forfeiture, or
17 other imposition, or offense: PROVIDED, That data, material, or
18 documents that do not disclose information related to a specific or
19 identifiable taxpayer do not constitute tax information under this
20 section. Except as provided by RCW 82.32.410, nothing in this chapter
21 shall require any person possessing data, material, or documents made
22 confidential and privileged by this section to delete information from
23 such data, material, or documents so as to permit its disclosure;

24 (d) "State agency" means every Washington state office, department,
25 division, bureau, board, commission, or other state agency;

26 (e) "Taxpayer identity" means the taxpayer's name, address,
27 telephone number, registration number, or any combination thereof, or
28 any other information disclosing the identity of the taxpayer; and

29 (f) "Department" means the department of revenue or its officer,
30 agent, employee, or representative.

31 (2) Returns and tax information shall be confidential and
32 privileged, and except as authorized by this section, neither the
33 department of revenue nor any other person may disclose any return or
34 tax information.

35 (3) This section does not prohibit the department of revenue from:

36 (a) Disclosing such return or tax information in a civil or
37 criminal judicial proceeding or an administrative proceeding;

1 (i) In respect of any tax imposed under the laws of this state if
2 the taxpayer or its officer or other person liable under Title 82 RCW
3 is a party in the proceeding; or

4 (ii) In which the taxpayer about whom such return or tax
5 information is sought and another state agency are adverse parties in
6 the proceeding;

7 (b) Disclosing, subject to such requirements and conditions as the
8 director shall prescribe by rules adopted pursuant to chapter 34.05
9 RCW, such return or tax information regarding a taxpayer to such
10 taxpayer or to such person or persons as that taxpayer may designate in
11 a request for, or consent to, such disclosure, or to any other person,
12 at the taxpayer's request, to the extent necessary to comply with a
13 request for information or assistance made by the taxpayer to such
14 other person: PROVIDED, That tax information not received from the
15 taxpayer shall not be so disclosed if the director determines that such
16 disclosure would compromise any investigation or litigation by any
17 federal, state, or local government agency in connection with the civil
18 or criminal liability of the taxpayer or another person, or that such
19 disclosure would identify a confidential informant, or that such
20 disclosure is contrary to any agreement entered into by the department
21 that provides for the reciprocal exchange of information with other
22 government agencies which agreement requires confidentiality with
23 respect to such information unless such information is required to be
24 disclosed to the taxpayer by the order of any court;

25 (c) Disclosing the name of a taxpayer with a deficiency greater
26 than five thousand dollars and against whom a warrant under RCW
27 82.32.210 has been either issued or filed and remains outstanding for
28 a period of at least ten working days. The department shall not be
29 required to disclose any information under this subsection if a
30 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
31 a warrant that has not been filed; and (iii) has entered a deferred
32 payment arrangement with the department of revenue and is making
33 payments upon such deficiency that will fully satisfy the indebtedness
34 within twelve months;

35 (d) Disclosing the name of a taxpayer with a deficiency greater
36 than five thousand dollars and against whom a warrant under RCW
37 82.32.210 has been filed with a court of record and remains
38 outstanding;

1 (e) Publishing statistics so classified as to prevent the
2 identification of particular returns or reports or items thereof;

3 (f) Disclosing such return or tax information, for official
4 purposes only, to the governor or attorney general, or to any state
5 agency, or to any committee or subcommittee of the legislature dealing
6 with matters of taxation, revenue, trade, commerce, the control of
7 industry or the professions;

8 (g) Permitting the department of revenue's records to be audited
9 and examined by the proper state officer, his or her agents and
10 employees;

11 (h) Disclosing any such return or tax information to a peace
12 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
13 official purposes. The disclosure may be made only in response to a
14 search warrant, subpoena, or other court order, unless the disclosure
15 is for the purpose of criminal tax enforcement. A peace officer or
16 county prosecuting attorney who receives the return or tax information
17 may disclose that return or tax information only for use in the
18 investigation and a related court proceeding, or in the court
19 proceeding for which the return or tax information originally was
20 sought;

21 (i) Disclosing any such return or tax information to the proper
22 officer of the internal revenue service of the United States, the
23 Canadian government or provincial governments of Canada, or to the
24 proper officer of the tax department of any state or city or town or
25 county, for official purposes, but only if the statutes of the United
26 States, Canada or its provincial governments, or of such other state or
27 city or town or county, as the case may be, grants substantially
28 similar privileges to the proper officers of this state;

29 (j) Disclosing any such return or tax information to the Department
30 of Justice, the Bureau of Alcohol, Tobacco (~~(and)~~), Firearms (~~(of)~~) and
31 Explosives within the Department of (~~(the Treasury)~~) Justice, the
32 Department of Defense, the United States Customs Service, the Coast
33 Guard of the United States, and the United States Department of
34 Transportation, or any authorized representative thereof, for official
35 purposes;

36 (k) Publishing or otherwise disclosing the text of a written
37 determination designated by the director as a precedent pursuant to RCW
38 82.32.410;

1 (l) Disclosing, in a manner that is not associated with other tax
2 information, the taxpayer name, entity type, business address, mailing
3 address, revenue tax registration numbers, North American industry
4 classification system or standard industrial classification code of a
5 taxpayer, and the dates of opening and closing of business. This
6 subsection shall not be construed as giving authority to the department
7 to give, sell, or provide access to any list of taxpayers for any
8 commercial purpose;

9 (m) Disclosing such return or tax information that is also
10 maintained by another Washington state or local governmental agency as
11 a public record available for inspection and copying under the
12 provisions of chapter 42.17 RCW or is a document maintained by a court
13 of record not otherwise prohibited from disclosure;

14 (n) Disclosing such return or tax information to the United States
15 department of agriculture for the limited purpose of investigating food
16 stamp fraud by retailers;

17 (o) Disclosing to a financial institution, escrow company, or title
18 company, in connection with specific real property that is the subject
19 of a real estate transaction, current amounts due the department for a
20 filed tax warrant, judgment, or lien against the real property;

21 (p) Disclosing to a person against whom the department has asserted
22 liability as a successor under RCW 82.32.140 return or tax information
23 pertaining to the specific business of the taxpayer to which the person
24 has succeeded; (~~(o)~~)

25 (q) Disclosing such return or tax information in the possession of
26 the department relating to the administration or enforcement of the
27 real estate excise tax imposed under chapter 82.45 RCW, including
28 information regarding transactions exempt or otherwise not subject to
29 tax; or

30 (r) Disclosing to local taxing jurisdictions the identity of
31 sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for
32 which relief is granted.

33 (4)(a) The department may disclose return or taxpayer information
34 to a person under investigation or during any court or administrative
35 proceeding against a person under investigation as provided in this
36 subsection (4). The disclosure must be in connection with the
37 department's official duties relating to an audit, collection activity,
38 or a civil or criminal investigation. The disclosure may occur only

1 when the person under investigation and the person in possession of
2 data, materials, or documents are parties to the return or tax
3 information to be disclosed. The department may disclose return or tax
4 information such as invoices, contracts, bills, statements, resale or
5 exemption certificates, or checks. However, the department may not
6 disclose general ledgers, sales or cash receipt journals, check
7 registers, accounts receivable/payable ledgers, general journals,
8 financial statements, expert's workpapers, income tax returns, state
9 tax returns, tax return workpapers, or other similar data, materials,
10 or documents.

11 (b) Before disclosure of any tax return or tax information under
12 this subsection (4), the department shall, through written
13 correspondence, inform the person in possession of the data, materials,
14 or documents to be disclosed. The correspondence shall clearly
15 identify the data, materials, or documents to be disclosed. The
16 department may not disclose any tax return or tax information under
17 this subsection (4) until the time period allowed in (c) of this
18 subsection has expired or until the court has ruled on any challenge
19 brought under (c) of this subsection.

20 (c) The person in possession of the data, materials, or documents
21 to be disclosed by the department has twenty days from the receipt of
22 the written request required under (b) of this subsection to petition
23 the superior court of the county in which the petitioner resides for
24 injunctive relief. The court shall limit or deny the request of the
25 department if the court determines that:

26 (i) The data, materials, or documents sought for disclosure are
27 cumulative or duplicative, or are obtainable from some other source
28 that is more convenient, less burdensome, or less expensive;

29 (ii) The production of the data, materials, or documents sought
30 would be unduly burdensome or expensive, taking into account the needs
31 of the department, the amount in controversy, limitations on the
32 petitioner's resources, and the importance of the issues at stake; or

33 (iii) The data, materials, or documents sought for disclosure
34 contain trade secret information that, if disclosed, could harm the
35 petitioner.

36 (d) The department shall reimburse reasonable expenses for the
37 production of data, materials, or documents incurred by the person in
38 possession of the data, materials, or documents to be disclosed.

1 (e) Requesting information under (b) of this subsection that may
2 indicate that a taxpayer is under investigation does not constitute a
3 disclosure of tax return or tax information under this section.

4 (5) Any person acquiring knowledge of any return or tax information
5 in the course of his or her employment with the department of revenue
6 and any person acquiring knowledge of any return or tax information as
7 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
8 section, who discloses any such return or tax information to another
9 person not entitled to knowledge of such return or tax information
10 under the provisions of this section, is guilty of a misdemeanor. If
11 the person guilty of such violation is an officer or employee of the
12 state, such person shall forfeit such office or employment and shall be
13 incapable of holding any public office or employment in this state for
14 a period of two years thereafter.

15 **PART XVI**

16 **MISCELLANEOUS PROVISIONS**

17 **Sec. 1601.** 2004 c 153 s 502 (uncodified) is amended to read as
18 follows:

19 (1) If a court of competent jurisdiction enters a final judgment on
20 the merits that is based on federal or state law, is no longer subject
21 to appeal, and substantially limits or impairs the essential elements
22 of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of
23 2002, then sections 1 through 6, 8 through 17, and 19, chapter 67, Laws
24 of 2002 ((is)) are null and void in ((its)) their entirety.

25 ~~(2) ((If the contingency in subsection (1) of this section occurs,~~
26 ~~section 502, chapter 168, Laws of 2003 is null and void.~~

27 ~~(3))~~ If the contingency in subsection (1) of this section occurs,
28 section 410, chapter 153, Laws of 2004 is null and void.

29 (3) If the contingency in subsection (1) of this section occurs,
30 sections 1002, 1005, 1013, 1017, 1022, and 1024 of this act are null
31 and void.

32 NEW SECTION. **Sec. 1602.** Part headings used in this act are not
33 any part of the law.

1 NEW SECTION. **Sec. 1603.** This act does not affect any existing
2 right acquired or liability or obligation incurred under the sections
3 amended or repealed in this act or under any rule or order adopted
4 under those sections, nor does it affect any proceeding instituted
5 under those sections.

6 NEW SECTION. **Sec. 1604.** Sections 301, 1301, and 1602 of this act
7 take effect July 1, 2006.

8 NEW SECTION. **Sec. 1605.** Sections 101 through 105, 201, 202, 401,
9 501 through 503, 601, 701, 801, 802, 901 through 905, 1001, 1002, 1004,
10 1005, 1007 through 1013, 1015 through 1017, 1019 through 1024, 1101
11 through 1108, 1201, 1202, 1302, 1401 through 1403, 1501, and 1502 of
12 this act take effect July 1, 2007.

13 NEW SECTION. **Sec. 1606.** (1) Section 302 of this act takes effect
14 when:

15 (a) The United States congress grants individual states the
16 authority to impose sales and use tax collection duties on remote
17 sellers; or

18 (b) It is determined by a court of competent jurisdiction, in a
19 judgment not subject to review, that a state can impose sales and use
20 tax collection duties on remote sellers.

21 (2) The department of revenue shall provide notice to affected
22 taxpayers, the legislature, and others as deemed appropriate by the
23 department, if either of the contingencies in this section occurs.

24 NEW SECTION. **Sec. 1607.** Section 1301 of this act expires July 1,
25 2007.

26 NEW SECTION. **Sec. 1608.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

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